

*These notes refer to the Food Standards Act 1999 (c.28)  
which received Royal Assent on 11 November 1999*

# **FOOD STANDARDS ACT 1999**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Food Standards Act 1999. They have been prepared jointly by the Ministry of Agriculture, Fisheries and Food, Department of Health, Scottish Executive, National Assembly for Wales and the Department of Health and Social Services in Northern Ireland in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **SUMMARY AND BACKGROUND**

3. The Act gives effect to the proposals of the White Paper, 'The Food Standards Agency: A Force for Change' (Cm 3830). A draft Bill was published for consultation in the Command Paper 'The Food Standards Agency: Consultation on Draft Legislation' (Cm 4249) on 27 January 1999. The draft Bill was examined by the Food Standards Committee, whose report was published on 31 March 1999 (House of Commons Food Standards Committee Report of Session 1998-99 (HC 276) on the Food Standards Draft Bill).
4. The Act was introduced in the House of Commons on 10 June 1999 and received Royal Assent on 11 November 1999.
5. The main purpose of the Act is to establish the Food Standards Agency, provide it with functions and powers, and to transfer to it certain functions in relation to food safety and standards under other Acts. It sets out the Agency's main objective of protecting public health in relation to food and the functions that it will assume in pursuit of that aim, and gives the Agency the powers necessary to enable it to act in the consumer's interest at any stage in the food production and supply chain. The Act provides for the Agency's main organisational and accountability arrangements. In addition, it provides powers to establish a scheme for the notification of the results of tests for food-borne diseases.

### **OVERVIEW OF THE ACT**

6. The main body of the Act is arranged as follows:
  - *The Food Standards Agency* (sections 1-5), concerns the establishment of the Agency, its main objective and its main organisational arrangements including the establishment of advisory committees (more detailed provisions are contained in Schedules 1 and 2);
  - *General functions in relation to food* (sections 6-8), confers on the Agency responsibility for developing food policy and advising Ministers and other public authorities, for advising consumers and other interested parties and for keeping abreast of developments relevant to its remit;

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- *General functions in relation to animal feedingstuffs* (section 9) supplements the Agency's functions in relation to animal feed;
- *Observations with a view to acquiring information* (sections 10-11) gives the Agency functions in relation to surveillance and provides powers to enable it to carry them out;
- *Monitoring of enforcement action* (sections 12-16) gives the Agency a function of monitoring food and feedingstuffs law enforcement and provides powers to enable it to carry it out;
- *Other functions of the Agency* (sections 17-21) describes the Secretary of State and the devolved authorities' powers to delegate the making of emergency orders to the Agency, the Agency's power to publish its advice, its functions under other Acts and supplementary functions (detailed functions under the Food Safety Act 1990 and other primary legislation are provided for in Schedule 3);
- *General provisions relating to the functions of the Agency* (sections 22-25), concerns certain considerations which the Agency must observe in carrying out its functions; provides for directions by Ministers and the devolved authorities should the Agency fail to perform its duties, and allows for modification of enactments to allow disclosure of information to the Agency and publication by it;
- *Miscellaneous provisions* (sections 26-35), sets out the functions no longer to be exercised by the Minister of Agriculture, Fisheries and Food, and the Department of Agriculture for Northern Ireland and makes various provisions for consultation with other parts of Government or the devolved administrations on aspects of food safety. It also allows secondary legislation to apply to animal feedingstuffs provisions equivalent to those of the Food Safety Act 1990, and corresponding Northern Ireland legislation and makes provisions for the modification of the constitution of the Agency, in the light of experience with devolution, or in the event of Scotland or Northern Ireland exercising their right to withdraw from the Agency or any of its functions;
- *Final provisions* (sections 36-43), defines various terms used in the Act, makes provision in relation to the financing of the Agency (accounts and audit provisions are in Schedule 4), applies the provisions of the Act to the Crown and amends or repeals legislation as a consequence of the main provisions of the Act (details are set out in the associated Schedules 5 and 6).

## **COMMENTARY ON SECTIONS**

### ***Section 1: The Food Standards Agency***

7. This section establishes the Food Standards Agency and sets its main objective. More details concerning the constitution of the Agency can be found in Schedule 1.
8. *Subsection (1)* establishes the Agency for the purpose of carrying out the functions that are provided for in the rest of the Act. These functions provide the framework in which the Agency will operate. The way in which they will be carried out is limited by the requirements that are set down in the subsequent provisions, in particular sections 22 and 23. These provide for the Agency to carry out its functions in accordance with a statement of objectives and practices that has been approved by the appropriate authorities (as described in section 2 below). Section 23 furthermore requires that the Agency must act in a proportionate manner by taking account of risks, costs and benefits, as well as of any advice it receives from its advisory committees.
9. *Subsection (2)* defines the main objective of the Agency. Food safety is central to this objective, but the subsection also embraces the Agency's role in relation to nutrition and diet, and protecting the wider food-related interests of consumers - sometimes referred

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to as food standards. This would cover in particular such matters as the labelling and composition of food (section 36(2) clarifies that the expression ‘interests of consumers in relation to food’, used in section 1 and at various places in the Act, includes matters related to the labelling, marking, presenting or advertising of food, and the descriptions which may be applied to food). This subsection does not imply that the Agency has any wider powers or functions than those provided by the rest of the Act, but sets the context in which the Agency’s powers must be used.

10. *Subsection (3)* establishes the Agency as a Crown body. It will be a non-Ministerial government department.

## ***Section 2: Appointment of members etc***

11. This deals with the membership of the Agency and the procedures for appointing people to serve.
12. *Subsection (1)* provides for the Agency to have a Chairman, Deputy Chairman and 8-12 other members, of whom one will be appointed by the National Assembly for Wales, two by the Scottish Ministers, and one by the Department of Health and Social Services for Northern Ireland. The rest will be appointed by the Secretary of State for Health.
13. *Subsection (2)* specifies that the appointment of the Chairman and Deputy Chairman will be made jointly by the Secretary of State and his counterparts in the ‘appropriate authorities’ for Scotland, Wales and Northern Ireland. The ‘appropriate authorities’ are defined in section 36 of the Act and are:
  - the Secretary of State: in practice, for the purposes of the Food Standards Agency, this will be the Secretary of State for Health;
  - in Scotland, the Scottish Ministers: this is a collective term for the members of the Scottish Executive of the devolved administration. Again, for practical purposes, the Scottish Minister with responsibility for health is expected to take the lead;
  - in Wales, the National Assembly for Wales. Under the Government of Wales Act 1998, powers are vested in the National Assembly as a whole. In practice, those with responsibility for health matters would be expected to lead on the Agency in Wales;
  - in Northern Ireland, the Department of Health and Social Services: in Northern Ireland, powers are vested in departments, acting on behalf of Ministers, or after the Northern Ireland Act 1998 is brought into force, the Northern Ireland Executive.
14. *Subsection (2)* requires the authorities to consult each other before making appointments.
15. *Subsection (3)* provides for the authorities, in making appointments, to try to secure a reasonable balance of relevant skills and experience in the Agency’s membership. The members will not be appointed to be representative of any particular interest or sector. *Subsection (3)(b)* requires the appropriate authorities to consider whether the person’s financial or other interests - for example shares in a major food manufacturer - are likely to compromise his or her position as a member of the Agency. This does not necessarily mean that any such interests will automatically disqualify a person from appointment as a member. Under paragraph 9 of Schedule 1, the Agency will be obliged to establish and publish a register of the private interests of members: although the Act does not specifically require it, the Agency’s procedural rules would be expected to prevent a member with an interest in a particular matter from taking part in discussions on it.

### ***Section 3: Appointment of chief executive and directors***

16. *Subsection (2)* gives the Agency's Chief Executive particular responsibility to ensure that the Agency is run efficiently and effectively. He or she will be responsible to the Agency's members for the day to day running of the Agency itself and will also be the Agency's accounting officer (the officer responsible to Parliament for the way in which the Agency spends its money). Under *subsection (3)* the first Chief Executive is to be appointed jointly by the appropriate authorities, because the members of the Agency are unlikely all to be appointed when this appointment is made. Subsequent appointments will be a matter for the Agency, with the approval of the appropriate authorities.
17. The separate directors for Scotland, Wales and Northern Ireland are appointed under *subsection (4)*. Each will each head an executive body with responsibility for the operation of the Agency in the relevant part of the UK and will report to the Chief Executive. By analogy with the Chief Executive, the first appointment of the directors under *subsection (5)* will be made by the appropriate authority in Scotland, Wales or Northern Ireland, with subsequent appointments by the Agency with the authority's approval.

### ***Section 4: Annual and other reports***

18. The Agency will be required to lay an annual report on its activities and performance before Parliament and before the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. It may also make other reports to them.

### ***Section 5: Advisory committees***

19. The purpose of the committees established by *subsection (1)* of this section will be to provide a focus for Scottish, Welsh and Northern Ireland interests in food safety and standards. They will be set up with a defined remit that will reflect the responsibilities of the UK Agency. Their membership will reflect the range of interests on food safety and standards issues in Scotland, Wales and Northern Ireland. The Agency is obliged under section 23 to take their advice into account when carrying out its functions or advising Ministers or the appropriate authorities.
20. *Subsection (2)* enables the Secretary of State to establish an advisory committee for England, or English regions, with a similar purpose to those for Scotland, Wales and Northern Ireland. This provision has been included in case the Secretary of State feels such committees may be needed in future - in particular for the English regions. There is no current intention to establish such committees.
21. *Subsection (3)* empowers the Agency to establish other specialist advisory committees if it so wishes. Further details on advisory committees, including provisions for the transfer of existing committees to the Agency and the creation of joint committees, are contained in Schedule 2.

### ***Section 6: Development of food policy and provision of advice, etc. to public authorities***

22. This section gives the Agency the function of providing advice, information and assistance, including on matters relating to the development of policy on food safety and related matters, to any public authority (which would include, for example, local authorities or agencies of government). So far as Ministers, government departments and their equivalents in the devolved authorities are concerned, the Agency will have a duty to provide such advice, information and assistance on request, unless it is not reasonably practicable for it to do so (for example, because the resource costs of providing any particular item of information would be disproportionate).
23. The advice, information and assistance which the Agency has the function of providing could for example include making recommendations to Ministers on the need for

new primary legislation or proposing and drafting secondary legislation in order to improve food safety and standards. Another important aspect of the Agency's function of assisting Ministers will be to represent the UK at official level in relevant EU and other international forums.

24. It is intended that the Agency as a UK body will be the primary source of policy advice in relation to food safety and associated areas to the Government as a whole, and to the devolved authorities. Most of the relevant expertise available to the Government and those authorities in the area of food safety and standards will therefore reside with the Agency and will not be duplicated within other government departments. The Agency will also be able to advise on the development of policies by other government departments on matters that are relevant to the Agency's own area of responsibility, for example advice to the Minister of Agriculture, Fisheries and Food on activities on the farm which may have an impact on food hygiene; or on relevant consumer protection matters to the Department of Trade and Industry.

### ***Section 7: Provision of advice, information and assistance to other persons***

25. This section deals with the provision of advice, information and assistance to the general public or to individuals and bodies who are not public authorities.
26. The section allows for information and advice to be given to either the general public as a whole or to individuals or particular sections of it such as groups representative of food industry sectors. Among other things, the Agency will be able, for example, to:
- run information campaigns on issues of current interest or importance;
  - publish scientific data arising from research or surveillance and advise on its interpretation;
  - publish information on enforcement activities, such as the existing BSE/meat enforcement publications;
  - produce leaflets on food hygiene, labelling etc.;
  - run a consumer helpline;
  - issue advice for people with food allergies;
  - pass on information about developments in food science to the public as a whole and to particular groups such as food producers;
  - produce guidance on food safety matters for the food industry;
  - issue food hazard warnings, alerting the public to particular problems.

### ***Section 8: Acquisition and review of information***

27. This section concerns the Agency's function of keeping itself properly informed in order to carry out its other functions.
28. Under *Subsection (2)(a)*, the Agency will keep abreast of new developments in discharging this general function.
29. *Subsection (2)(b)* provides for the Agency to develop its scientific understanding by undertaking, commissioning or coordinating research. Current research and development projects within the remit of the Agency funded by the Ministry of Agriculture, Fisheries and Food and any relevant research funded by other departments (such as the Department of Health) will be transferred to the Agency at the outset.
30. *Subsection (3)* makes it clear that the purpose of the Agency's information-gathering activities, including the carrying out of observations (see section 10 below), is to enable it to carry out its general functions in an informed and effective way.

***Section 9: General functions in relation to animal feedingstuffs***

31. This section provides that the Agency has the same functions of giving policy and other advice to public authorities, advice and information to the public and other bodies, and on the acquisition of information, in relation to animal feedingstuffs.
32. The Agency will have wide-ranging responsibilities in the area of animal feedingstuffs. These include, for example, EU controls governing the safety, composition and labelling of animal feeds. The main reason for giving the Agency responsibility in this area is because of the possible implications of animal feedingstuffs for the safety of human consumers eating meat and animal products. This is already encompassed by the Agency's main objective in section 1 and its advice and information functions in sections 6-8, which apply to food safety and other interests of consumers in relation to food. However, in carrying out its responsibilities on animal feed, the Agency will also incidentally deal with matters which are not directly about food safety or the interests of consumers of food. For example, most of the relevant EU and domestic provisions also apply to pet foods, and responsibility for these cannot readily be separated from responsibility for animal feeds. Similarly there are provisions which relate to protecting the interests of the purchasers of animal feeds, or ensuring that the safety or health of the animal itself is not damaged. Although these matters are secondary to the Agency's primary purpose in relation to human health, the Agency needs to be able to have the legal basis to undertake these functions and this section provides it.
33. Prior to this Act, feedingstuffs were regulated by means of regulations under the Food Safety Act 1990, the Agriculture Act 1970 and the European Communities Act 1972, and by Orders made under the Animal Health Act 1981. Under the Act, the Minister of Agriculture, Fisheries and Food will cease to have responsibility for regulations under the 1990 Act, but will remain responsible for the 1970 and 1981 Acts. Both the Secretary of State and the Minister of Agriculture, Fisheries and Food can make feed-related regulations under the European Communities Act 1972. The Agency will be able to give advice to both Ministers on the need for legislation under all these Acts as it sees appropriate. However, orders under the Animal Health Act in relation to feed are usually used to control feed borne diseases of animals, where MAFF's veterinary expertise is very important. Thus MAFF will retain the primary policy making role in relation to these. Arrangements will be put in place to ensure that MAFF and the Agency do not duplicate work in this area. MAFF and the Agency will co-operate closely to ensure that both bodies consult each other on feedingstuffs matters affecting human and animal health (see also section 28 in relation to cooperation on zoonoses).

***Section 10: Power to carry out observations***

34. This section and section 11 set out specific powers that will help the Agency to fulfil its general function of obtaining and keeping under review any information relevant to its work. "Observations" describes the gathering of information on food safety and related matters through undertaking surveillance programmes or by other appropriate means for this purpose. The Agency will, if necessary, be able to conduct such work at any point in the food production and supply chain and anywhere else where there might be implications for food safety and related matters. For example, the Agency will be able to undertake observations on farms.
35. The two sections give the Agency specific powers necessary to obtain information, either directly or through an authorised person acting on its behalf. These powers replace previous more limited powers contained in section 25 of the Food Safety Act 1990 and corresponding Northern Ireland legislation, which allow Ministers to make orders concerning the provision of information and the taking of samples of food, substances used in the preparation of food and contact materials. These new provisions expand the previous powers to allow the Agency to carry out its proposed role in monitoring activities at earlier stages of food production and without the need for further



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secondary legislation; to allow authorised persons to make observations; and to require disclosure of certain relevant records relating to employees.

36. Examples of the types of observations that the Agency might carry out are surveillance programmes to investigate the presence of pathogens that could carry risks for human health levels; or of a particular contaminant, such as lead, in certain types of foodstuffs; or surveys of hygiene practices in a certain type of food business.
37. It should be noted that the powers in these sections relate to the gathering of information of a general and representative nature and not to the investigation of individual complaints or failures for which the enforcement powers in the Food Safety Act 1990 and corresponding Northern Ireland legislation and other powers will continue to be used by enforcement authorities. Since the observations made under this section are not intended for enforcement purposes there is no requirement that these powers be used to gather evidence in accordance with the kind of safeguards contained in the Police and Criminal Evidence Act 1984, and thus any information obtained could not in general be used directly for the purposes of food law enforcement. Where apparent problems were identified in the course of a surveillance exercise, the information gathered would normally be passed to the relevant enforcement authorities who would then take a decision on the need for further investigation.

### ***Section 11: Power of entry for persons carrying out observations***

39. *Subsection (1)* provides for observations to be undertaken on the Agency's behalf, by an authorised person, where the Agency is satisfied that they are qualified to do the work. The authorisation for powers of entry to be used must specify the nature of the observations to be carried out. *Subsection (2)* requires that the decision to grant any authorisation to exercise powers of entry must be taken by the Agency itself, or a committee, subcommittee or individual member, and not by members of the Agency's staff.
40. *Subsections (3) to (5)* describe the powers to enter premises, take samples and inspect records, and the conditions under which they must be exercised. The authorisation to exercise powers of entry may include limitations, including requiring any authorised person entering premises to follow any necessary food safety precautions. Samples may include samples from food sources which are defined in the Food Safety Act 1990 as any growing crop or live animal, bird or fish from which food is intended to be derived. Under subsection (5), the authorised person is required to provide a receipt on request for any sample taken or document copied.
41. *Subsection (6)* provides for access to health records of people employed in food production, but only where that information is relevant to food safety. For example, under certain of the food hygiene directives, employers are required to obtain medical certificates assessing their employees' suitability, on health grounds, to be employed in the handling of food, so as to ensure they do not constitute a general risk to public health. This provision would not, however, allow the Agency general access to an individual's personal health records.
42. *Subsection (7)* makes it an offence for any authorised individual to disclose any information he or she has obtained during the course of carrying out observations about any trade secret, other than in the course of his or her duty. This provision does not in any way restrict the provision of any information to the Agency, or affect the Agency's own powers to publish information. It deals with the kind of situation where an authorised person entering premises as part of a duty to carry out observations obtains commercially confidential information and then, acting in a private capacity, passes that information on, for example, to a commercial rival of the business. As such it parallels section 32(7) of the Food Safety Act 1990 and corresponding Northern Ireland legislation.

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43. *Subsection (8)*: this provision is similar to that contained in the Food Safety Act 1990 and corresponding Northern Ireland legislation. The current (November 1999) maximum value of a level 5 fine is £5,000.

### ***Section 12: Monitoring of enforcement action***

44. This section empowers the Agency to monitor, set standards for and audit the performance of enforcement authorities (which are defined in section 15) in carrying out food law enforcement.
45. *Subsection (2)* gives the Agency power to set standards against which to monitor performance. Normally, these would be set in respect of enforcement authorities generally, although the power extends to the setting of standards for individual authorities, should this be necessary.
46. Under *subsection (3)* the Agency must publish (as part of its annual report) information about its own performance as an enforcement authority corresponding to the information it would obtain about other authorities. At present, for the most part, this would relate to its role in enforcing the provisions of the various meat hygiene regulations through the Meat Hygiene Service (which will become part of the Agency) and in the enforcement of dairy hygiene regulations. The information published must include details on the Agency's performance in relation to any standards it has set to apply to its own enforcement activities which might, for example, be contained in a code of practice or equivalent; and any particular objectives it has set in its section 22 statement of objectives and practices. During consideration in the House of Lords, the Government gave a commitment that these would include objectives relating to the principles of better regulation.
47. The general publication of audit reports by the Agency is dealt with in section 19.
48. It is envisaged that a reasonable period of time would be provided for an enforcement authority to report back under *subsection (5)(b)* on its response to a report on its performance that was issued under *subsection (4)*. This would take account of the need for local authorities to consider their response in the course of their usual committee cycle.

### ***Section 13: Power to request information relating to enforcement action***

49. This section and section 14 provide the specific powers necessary for the Agency or an authorised person to carry out the monitoring role provided for in section 12. Section 41 of the Food Safety Act 1990 makes provision for Ministers to require reports and returns, but does not allow for audit visits or the provision of detailed returns, statistics and supporting documentation, nor does it provide for Ministers to set performance targets in relation to enforcement. Part IV of the Agriculture Act 1970 contains no powers comparable to section 41 of the Food Safety Act 1990. The majority of the powers contained in these sections are therefore new.
50. *Subsection (1)* empowers the Agency to require any information that may be relevant to its assessment of an enforcement authority's performance. As provided for in *subsection (2)*, this requirement would apply to anyone representing, working for or acting on behalf of that authority.

### ***Section 14: Power of entry for monitoring enforcement action***

51. *Subsection (1)* provides for the Agency to authorise the use of powers of entry in connection with its enforcement monitoring function. Under *subsection (2)* the decision to grant any authorisation must be given by the Agency itself, or a committee or subcommittee or individual member, and not by the Agency's staff.
52. *Subsection (3)* provides that the authorisation may include limitations, including requiring any authorised person entering premises to follow any necessary food safety



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precautions. It is expected that in authorising powers of entry, the Agency will require that any reasonable food safety precautions required on the premises should be followed.

53. *Subsection (4)* provides an authorised person with powers to enter and inspect individual premises in order to carry out monitoring work. This gives access to records and data held by the enforcement authority, anyone acting on its behalf, or where enforcement powers are exercisable and also provides for the taking of samples.
54. *Subsection (5)* specifies the types of premises that may be entered under the previous subsection. Besides offices and other premises used by the enforcement authority, this would include any laboratories that provide it with services relevant to its enforcement activity (this would include both in-house and independent laboratories). The Agency would not be expected to publish the details of the performance of the laboratories themselves; nor would its monitoring powers impinge on any service provided by the laboratories to private customers. The third category of premises subject to these powers covers any in which food law enforcement may be carried out (i.e. food shops, food manufacturers, slaughterhouses etc.).
55. *Subsection (6)* provides a power for an authorised person when entering premises to be accompanied by another person. This is needed, for example, to provide for an official of the European Commission engaged in a routine audit of member states' enforcement of the provisions of EC food law to accompany the Agency's authorised officer.
56. *Subsection (7)* requires that the authorised person must provide a receipt on request for any sample taken or document copied.
57. *Subsection (8)* provides for an offence for the same purpose as that described in section 11(7) above but also covering a person accompanying an authorised person under subsection (6).
58. *Subsection (9)* adapts the provisions of this section to monitoring of enforcement activity of the Agency itself or of Ministers or the devolved authorities (for example the enforcement of meat hygiene legislation). The power of entry to premises occupied by the enforcement authority is excluded as it would be unnecessary to give a power to the Agency to authorise a person to enter its own premises.

***Section 15: Meaning of 'enforcement authority' and related expressions***

59. *Subsection (1)* defines the legislation covered by the enforcement monitoring powers.
60. *Subsection (2)* defines an enforcement authority for the purposes of the above provisions. The bodies responsible for enforcing or executing the provision of the Food Safety Act 1990 or legislation made under it are normally, unless otherwise specified, 'food authorities'. They are defined in the Act as normally being local authorities (metropolitan borough, district or county councils in England and Wales; island or district councils in Scotland) or, where appropriate, port health authorities. In some cases, by virtue of section 6(4) of the 1990 Act, Ministers themselves, or, following this Act, the Agency, may also be specified as enforcement authorities for particular regulations. Under the corresponding Northern Ireland legislation, the enforcement authorities are district councils or the Department of Agriculture. Under Part IV of the Agriculture Act 1970, "enforcement authorities" are county, metropolitan district and London borough councils, and the Port of London Health Authority in England; and county and county borough councils in Wales.

***Section 16: Offences relating to sections 13 and 14***

61. This section makes it an offence for anyone to obstruct the Agency's authorised officer from exercising power of entry or knowingly to provide false or misleading information or to withhold information required under sections 13 and 14. The current (November 1999) maximum value of a level 5 fine is £5,000.

***Section 17: Delegation of powers to make emergency orders***

62. Under sections 1 and 2 of the Food and Environment Protection Act 1985 and section 13 of the Food Safety Act 1990 the Secretary of State may make emergency orders in response to circumstances or incidents which pose a threat to public health in relation to food. The Secretary of State will retain these powers, and in addition the Agency may be empowered by him to make emergency orders itself on his behalf. This power does not give the Agency the ability to make legislation itself in other areas, and in practice it is envisaged that the Agency will only make orders in emergency situations where the Secretary of State is not available.
63. *Subsection (3)* makes it clear that it is the Secretary of State who is ultimately answerable for emergency legislation made by the Agency on his behalf, and that anything done by the Agency is in law done by the Secretary of State.
64. Responsibility for orders under the two Acts is devolved to the appropriate authorities in Scotland and Wales, and in Northern Ireland is exercised by departments under equivalent legislation. *Subsection (5)* provides these authorities with the power to delegate their powers to make emergency orders under the relevant legislation to the Agency within their own competence.

***Section 18: Functions under other Acts***

65. This section introduces Schedule 3, concerning amendments to other enactments which confer functions on the Agency.
66. Much of the legislation which is amended by Schedule 3 has been devolved to Scotland. This means that many functions of Ministers of the Crown (i.e. the Secretary of State and Minister of Agriculture, Fisheries and Food) under the legislation have transferred to Scottish Ministers, and Parliament's role in relation to secondary legislation to the Scottish Parliament.
67. However, the provisions of the Scotland Act 1998, and orders made under it which give effect to the transfer, do not generally amend the text of Acts of Parliament to show what has been done. Thus when this Act amends Acts which have been subject to devolution, it does not attempt to alter the text of those Acts to reflect post-devolution responsibilities. Instead, the amendments are deemed to date from before the enactment of the Scotland Act, so that the provisions of that Act automatically transfer functions to the relevant parties in Scotland. This ensures that all the powers under the Scotland Act to make further provisions flowing from devolution are available.

***Section 19: Publication etc. by the Agency of advice and information***

68. This section empowers the Agency to publish advice given by it in accordance with its general functions under sections 6 (development of food policy and provision of advice, etc. to public authorities) and 7 (provision of advice, information and assistance to other persons) or information obtained by it as a result of its observations or enforcement monitoring (sections 10 and 12). It also enables the Agency to publish any other information it holds.
69. The Agency's express ability to publish any of its advice to Ministers will be an important factor in its influence and independence: although Ministers would not be obliged to accept the Agency's advice, they would normally be expected to explain their reasons for not doing so.
70. It is envisaged that the Agency will normally wish to publish much of its advice and information. There are however certain limited circumstances in which publication would be inappropriate. For example, the provisions of the Data Protection Act 1998 will continue to apply in relation to personal information (*subsection (2)*). *Subsection (3)* also makes clear that the Agency's power to publish information does not automatically override prohibitions on publication in existing legislation or EU

obligations that prohibit the publication of certain kinds of information. Section 25 nevertheless empowers the Secretary of State and the devolved authorities to make orders relaxing or lifting statutory prohibitions where these prevent the Agency from carrying out its functions effectively or from publishing information that is clearly in the public interest.

71. *Subsection (4)* provides that in deciding to publish any advice or information, the Agency will first have to consider whether the public interest in disclosure (for example, in terms of promoting openness or in making people aware of health risks) is outweighed by confidentiality considerations (such as personal privacy or commercial confidence).
72. *Subsection (5)* provides that the duty to take account of any consideration of confidentiality under *subsection (4)* does not apply to information relating to the performance of enforcement authorities or people acting on behalf of enforcement authorities. However, in respect of information on, for example, the activities of a business that was obtained by the Agency while monitoring a local authority's enforcement work, the test in subsection (4) would apply.
73. *Subsection (7)* makes clear that the Agency's power to publish is limited only by those duties and considerations that are set down in subsections (2), (3) and (4).
74. *Subsection (9)* provides for the Agency to disclose information to another public authority, subject to the same considerations as set out in this section. Therefore, for example, the Agency could pass on confidential information to enforcement authorities to assist them in carrying out their enforcement functions.

### ***Section 20: Power to issue guidance on control of food-borne diseases***

75. This section expands on the Agency's general function to give advice, information and assistance to provide it with the specific function of providing guidance to local authorities and other public authorities, including health authorities, on the management and control of outbreaks of food-borne illness (for example, salmonella, E.coli 0157, or campylobacter). Such guidance might, for example, include guidance on tracing the food-related source of any outbreak, or on the speed with which action needs to be taken to limit the spread of food poisoning.

### ***Section 21: Supplementary powers***

76. This section gives the Agency power to take action which will help it to discharge its functions (subject to other provisions in the Act which constrain the manner in which the Agency may act). This section, although very general, does not give the Agency any power to act outside the area of its functions.
77. *Subsection (2)* makes clear that the Agency's powers include the ability to provide education or training. Specific reference is also made to the provision of financial support, the acquisition or disposal of property and the institution of criminal proceedings (in England, Wales and Northern Ireland - prosecutions in Scotland are the sole responsibility of the Procurator Fiscal). Other relevant action might include entering into contracts.
78. *Subsection (3)* allows the Agency to charge for any facilities or services it provides at the request of any person. Such charges would be made in accordance with the usual Government guidance on fees and charges.

### ***Section 22: Statement of general objectives and practices***

79. This section requires the Agency to prepare and publish a statement of its general objectives and practices. The statement must be approved by the appropriate authorities. The statement will be formulated within the general framework of the Agency's main objective, in section 1(2).

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80. *Subsection (2)* specifies that, among any other general objectives it wishes to include in the statement, the Agency must address three in particular. These relate to
- consulting with interested parties on the Agency's activities,
  - facilitating proper consultation between the Agency and other Departments of Government, local authorities and other public authorities on matters of mutual interest, and
  - ensuring that the Agency's activities and decisions are open and transparent to the public.

It also provides for the appropriate authorities acting jointly to ask for the inclusion of particular objectives in the Statement. *Subsections (4), (5) and (6)* require that the statement should be approved by the Secretary of State and the devolved authorities, acting jointly, and published. The Secretary of State and the other appropriate authorities may amend the draft proposed by the Agency, but must consult the Agency before doing so. The final version of the approved statement must be laid before Parliament, the National Assembly for Wales and the Northern Ireland Assembly.

### ***Section 23: Consideration of objectives, risks, costs and benefits, etc***

81. This section requires the Agency, in carrying out its functions, to have due regard to its statement of general objectives and practices (section 22) and take account of relevant advice from advisory committees and certain other considerations, as follows.
82. *Subsection (2)* requires the Agency to take account in its decision-making process of:
- a) the nature and magnitude of risks which the action under consideration is designed to address. Risk to health is highlighted as of particular importance but other risks in relation to consumer protection (for example where labelling may mislead consumers) may also be relevant. The Agency is also required to take account of any uncertainty in the evidence. For example, where it is taking decisions in relation to a risk which is potentially very serious, but about which there is very little evidence, the Agency is likely to want to take a precautionary approach; and
  - b) the likely costs and benefits associated with the course of action under consideration. This would mean that the Agency must balance obvious compliance costs, as well as matters such as restriction of consumer choice, against the benefits of reduced risk to health etc. arising from any action.
83. *Subsection (3)* provides that the duty under the section does not apply where it is unreasonable or impracticable. For example, some of the Agency's actions may raise no concerns about risk, or an analysis of costs and benefits may not be appropriate. Decisions on appointments would be examples of this kind.

### ***Section 24: Directions relating to breach of duty or international obligations***

84. This section permits the Secretary of State (*subsection (1)*) to give the Agency directions in cases where it appears to him that the Agency has failed to fulfil the duty to comply with its statement of objectives and practices, take account of the advice of advisory committees, or consider risks, costs and benefits; or where it has failed in any other duty that he considers it should have performed. The power of direction relates only to serious failures by the Agency.
85. *Subsection (2)* gives similar powers of direction to the devolved authorities to the extent that it is within their devolved competence and to the Northern Ireland Department. This means that they will generally be able to direct in relation to the Agency's activities in Scotland, Wales and Northern Ireland, as appropriate.
86. *Subsection (3)* provides that any direction given in accordance with subsection (1) must contain a statement summarising the reasons for giving the direction.

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87. *Subsection (4)* allows the Secretary of State to give the Agency directions to do anything the UK is obliged to do under EU or international law. These are reserve powers, for use if the Agency has not already taken steps to fulfil the UK's obligations.
88. This power to issue directions is also vested in the devolved authorities or Northern Ireland department (see *subsection (5)*) where the directions relate to the implementation of EU or other international obligations which is the responsibility of that authority (in general, this will be the case for matters within devolved competence).
89. *Subsection (6)* requires that an authority proposing to give directions must consult the Agency and the other appropriate authorities before doing so.
90. If the Agency fails to follow directions given under subsection (1), the Secretary of State or the other appropriate authority may give effect to them, or the Secretary of State may take the steps outlined in *subsection (8)* with the agreement of the other appropriate authorities. Such powers, however, would only be used in the last resort and where normal processes of dialogue had failed to secure the necessary changes.

### ***Section 25: Power to modify enactments about disclosure of information***

91. This section enables the Secretary of State to make orders for the purpose of relaxing or overriding any prohibitions on disclosure of information contained in other legislation that would otherwise prevent the Agency from obtaining or publishing information in carrying out its functions under the Act. While section 19 requires the Agency to observe statutory bars on disclosure in exercising its power to publish, this section provides a means for dealing with those that would unnecessarily limit the Agency's ability to carry out its functions effectively. Some specific bars to disclosure are already dealt with directly in this Act (for example, by over-riding the limitation on disclosure of information about veterinary medicines in the Medicines Act 1968). This section provides the power to respond to any further barriers to disclosure identified in the light of experience.
92. *Subsection (1)* provides the basic order-making power.
93. A parallel enabling power exercisable by Scottish Ministers is provided in *subsection (2)*. *Subsection (3)* prevents Scottish Ministers from exercising their parallel powers in relation to legislation that lies outside their devolved competence. *Subsection (4)* makes similar provision for Northern Ireland.
94. *Subsection (5)* specifies the circumstances in which the enabling powers may be used to modify legislation i.e. where the legislation prevents the disclosure of information relevant to the Agency's functions, or prevent the Agency from publishing some information which would otherwise be published in accordance with section 19.
95. *Subsection (7)* applies this section (with appropriate modifications) to allow the removal or modification of common law rules.

### ***Section 26: Statutory functions ceasing to be exercisable by the Minister of Agriculture, Fisheries and Food***

96. Under this Act, the Minister of Agriculture, Fisheries and Food will cease to have any statutory functions in relation to most matters within the Agency's remit.
97. This section removes that Minister's statutory responsibilities in relation to emergencies which are likely to create a hazard to human health through the contamination of food stuffs (under Part I of the Food and Environment Protection Act 1985); food safety and standards (under the Food Safety Act 1990); and radioactive substances and waste (under the Radioactive Substances Act 1993). Similar provision is made for Northern Ireland in relation to certain functions of the Department of Agriculture.



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98. The detailed transfer of responsibilities to the Secretary of State for Health and devolved authorities and/or the Agency is dealt with in Schedules 3 and 5.

***Section 27: Notification of tests for food-borne disease***

99. This section enables the Secretary of State for Health and his equivalents in the devolved administrations to make regulations to set up a notification scheme for the results of laboratory tests for food borne organisms. This means that if a laboratory finds evidence that indicates a person may have been exposed to certain pathogens (which will be specified in any regulations) that are capable of causing illness and are commonly transmitted through food, they will be required to report it to the central authorities ('commonly' here means that when the disease occurs it is often food-borne; it does not mean the disease itself has to be common). This information will improve data collection on types of food-borne disease. It will enable the Agency better to understand patterns of the incidence and prevalence of food borne disease. The pathogens initially expected to be covered by a notification scheme are salmonella, E.coli O157 and campylobacter.
100. *Subsection (3)* allows the scheme to be set up to assist the work both of the Agency and of other bodies with public health responsibilities, such as the Department of Health and the Public Health Laboratory Service.
101. *Subsection (4)* describes provisions which must be included in any regulations, which include the type and form of notification required for each organism specified, and to whom it is to be notified. *Subsection (5)* sets out further detail which may be included in regulations. The regulations may create an offence of failure to notify. The regulations may set the maximum fine for this offence at any level up to 5 on the standard scale (currently £5,000).
102. Under *subsection (6)*, the Health Departments must consult representatives of interested parties before making any regulations.

***Section 28: Arrangements for sharing information about food-borne zoonoses***

103. This section makes it a duty of the Minister of Agriculture, Fisheries and Food (or any other Minister of the Crown whose responsibilities include matters related to foodborne zoonoses) and the devolved authorities or Northern Ireland Department on the one hand and the Agency on the other to make administrative arrangements for sharing relevant information on food-borne zoonoses (as defined in *subsection (5)*): this would include, for example, salmonella, campylobacter and E.coli).

***Section 29: Consultation on veterinary products***

104. *Subsection (1)* requires that Ministers who have responsibility for regulating veterinary products (principally, the Minister of Agriculture, Fisheries and Food acting through the Veterinary Medicines Directorate, an executive agency of MAFF) must consult the Agency on general policy matters relating to this work.
105. *Subsection (3)* allows the Secretary of State and the Minister to disclose to the Agency any information they have on matters connected with veterinary products, even if it was obtained by them pursuant to any enactment. In particular, this means that they can override the general restriction in the Medicines Act 1968 and secondary legislation based on it on disclosures of information relating to veterinary products (provided, for example, by businesses in connection with a licence application).
106. The further disclosure or publication of the information provided to the Agency under this sub-section is not prohibited by any statutory provision, and thus, subject to section 19(3) of the Act, the Agency may publish it or disclose it to other public authorities.
107. *Subsection (4)* applies this section to Northern Ireland.

**Section 30: Animal feedingstuffs: Great Britain**

108. The Agency has a general function of providing advice and information to Ministers in relation to animal feed. This is provided by sections 6 and 7 (by virtue of the effect feedingstuffs can have on food safety), and by section 9 in relation to the general safety of animal feed and the interests of users of feed.
109. At present, feedingstuffs are regulated under Part IV of the Agriculture Act 1970, and by regulations and Orders made under that Act, the European Communities Act 1972 and the Animal Health Act 1981.
110. This section allows Ministers to establish by order new provisions for the regulation of feed, based on the Food Safety Act 1990. Such an order, which would have the effect of updating the primary powers available for the regulation of feedingstuffs, could cover areas such as the composition, processing, treatment, manufacturing conditions and labelling of feedingstuffs.
111. The order would probably establish a general requirement for the safety of feedingstuffs (similar to the “food safety requirements” set out in section 8 of the Food Safety Act 1990), and allow further subordinate legislation to deal with more detailed requirements.
112. An order under this section can make incidental amendments and repeals to existing legislation – in practice, it would probably repeal Part IV of the Agriculture Act as it applies to feed. The application of Part IV to fertilisers would be unaffected.
113. The control of feedingstuffs is fully devolved to Scotland, and thus the order-making power is conferred on Scottish Ministers in relation to Scotland.
114. *Subsection (1)* enables the Ministers to regulate feedingstuffs along the lines described above.
115. *Subsection (2)* provides that an order made under these powers can be used to apply to animal feedingstuffs provisions which match those contained in the Food Safety Act 1990, so that food and feed may be dealt with in a similar manner. It will also allow EC requirements to be readily transposed into UK provisions under a single set of powers. This will give a more coherent body of legislation than at present where provisions are implemented under both the Agriculture Act 1970 and the European Communities Act 1972.
116. *Subsection (3)* provides that the power can also be used in relation to provisions of the Food Safety Act 1990, as amended by the Food Standards Act.
117. *Subsection (4)(a)* provides for orders made under this section to address the needs of animal health or human health and is necessary because the scope of the powers in this Act would not otherwise extend to animal health.
118. *Subsection (8)* provides for the order to be made jointly by the Secretary of State and the Minister of Agriculture, Fisheries and Food for England and Wales, and by the Scottish Ministers for Scotland. Orders made under this section must be subject to the affirmative resolution procedure - i.e. approved in draft by each House of Parliament or by the Scottish Parliament as appropriate before being made (as required by section 37).
119. A general definition of ‘animal feedingstuffs’ is given in section 37, although this may be refined in any orders to cover specific areas. Section 37 also provides that the order can repeal or amend existing legislation as necessary.

**Section 31: Animal feedingstuffs: Northern Ireland**

120. This section makes provision parallel to that in section 30 in relation to Northern Ireland.

**Section 32: Modification of this Act**

121. This section provides powers to modify the provisions of the Act and is intended to deal with circumstances where the need for change arises from experience of operating a UK body in the area of food safety and standards, where responsibility has been devolved.
122. The Agency is being established with powers in relation to policy areas which have been wholly devolved to Scotland, Wales and Northern Ireland, and is therefore appropriate that it should be the shared responsibility of the three devolved authorities and the UK Government (which also in effect represents the English interest). Its establishment coincides with the coming into operation of devolved authorities and legislatures in Scotland and Wales and there is therefore inevitably a degree of uncertainty about how they will choose to exercise their devolved powers in this area. Devolution in Northern Ireland has not yet come into effect in November 1999. Although Scottish Ministers and the Scottish Parliament and the National Assembly for Wales were consulted formally on the principle of a UK Agency, it is possible that experience will show a need for some adjustment to the constitution of the UK body. As such, alterations to the constitution of the Agency could in principle concern all four of the authorities and it is therefore necessary to have procedures whereby all four bodies are associated with such changes. This section and section 33 provide for such arrangements. They follow the model established in sections 89 and 90 of the Scotland Act 1998 which are concerned with the adaptation and transfer of property for cross-border public authorities.
123. *Subsection (1)* provides for modification to be made to the Food Standards Act by Order in Council where it is necessary to amend functions exercised by the appropriate authorities (i.e. the Secretary of State and the devolved administrations), Parliament, the Scottish Parliament or the Northern Ireland Assembly, or to amend the provisions on the establishment and constitution of the Agency (in particular sections 2 to 5 and Schedules 1, 2 and 4). For example it might, in the light of experience, be necessary to change the arrangements for the Scottish, Welsh and Northern Ireland advisory committees as established by section 5, or to change the number of members of the Agency or the experience which between them they must have.
124. The Order in Council route is chosen because it is clear that for the Agency to function successfully as a UK body it will depend on co-operation between the four authorities. Thus any amendments to its constitution, or the relationship between the different authorities in the UK, will need to be jointly agreed in each part of the UK. The Order in Council procedure is the most appropriate procedure for allowing each legislature formally to consider and consent to such changes.
125. *Subsection (2)* elaborates on the matters which can be included in an Order in Council made under this provision.
126. *Subsection (6)* provides for the Agency to be consulted before any amendments are made.
127. It should be noted that while section 32 provides a procedure for altering the Agency's constitution, it would not prevent Parliament making changes by a further Act. To the extent it is within their competence under the Scotland and Northern Ireland Acts, the Scottish Parliament and Northern Ireland Assembly will also be able to make changes to the arrangements in the Act using Acts passed by them.

**Section 33: Consequences of Agency losing certain functions**

128. Although the Food Standards Agency is being established as a UK body, the Scottish Parliament and the Northern Ireland Assembly may, within their competence, withdraw from the UK arrangements or any part of them, by means of an Act of the Scottish Parliament or Northern Ireland Assembly. This section provides for amendments to the Food Standards Act to be made to deal with the consequences for the Agency of any such decision. As with section 32, the Order in Council route is chosen since it provides

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a suitable procedure for use in all four legislatures. This section does not apply to the National Assembly for Wales which does not have primary legislative powers.

129. *Subsection (1)* provides that this section has effect where the Scottish Parliament or Northern Ireland Assembly pass an Act which has the effect of withdrawing from any of the functions of the Agency. For example, the Scottish Parliament might in future decide that it wished to set up a separate agency for Scotland, or that it wished some other body to carry out some of the Agency's functions, such as enforcement monitoring, without withdrawing Scotland from the Agency completely.
130. *Subsection (2)* goes on to specify the provisions which may be included in an Order in Council to make any consequential adjustments to the Agency. These include provisions to deal with the transfer of any property, rights and liabilities. The effect of the sub-section, read with *sub-sections (3) and (4)*, is to allow the Order to transfer property and liabilities which were used (or arose) in relation to the functions which the Agency is to cease to have, to be transferred to whatever body appears appropriate.

### ***Section 34: Duty to take account of functions of the Food Safety Promotion Board***

131. Under the North/South Cooperation (Implementation Bodies) (Northern Ireland) Order 1999, made on 10 March following the Agreement between the Government of Great Britain and Northern Ireland of 8 March in implementation of the Belfast Agreement, the Food Safety Promotion Board (FSPB) will be established as an all-Ireland implementation body. Its functions include promotion of food safety, research into food safety, communication of food alerts and surveillance of food-borne diseases. The FSPB Order will come into force on the appointed day when devolution takes place in Northern Ireland under the Northern Ireland Act 1998. This section provides for the Agency to cooperate with the FSPB in Northern Ireland, so as to ensure that it does not duplicate the activities of the FSPB.

### ***Section 35: Devolution in Scotland and Northern Ireland***

132. **Section 35** deals with various matters relating to Scotland and Northern Ireland.
133. *Subsection (1)(a)* concerns the power of the Scottish Parliament to call witnesses. Under section 23 of the Scotland Act 1998, the Scottish Parliament has a general power to call witnesses on any subject within the responsibility of members of the Scottish Executive. However, persons outside Scotland can be required to attend and give evidence only in relation to the discharge of functions of the Scottish Administration, of Scottish public authorities or cross-border public authorities (as defined in the Scotland Act). Since the Agency is not a Scottish authority or cross-border public authority, without the provision in section 35(1)(a), the Parliament would have no power to call witnesses from outside Scotland in relation to its activities.
134. *Subsection (1) (b)* concerns the Agency's accounts. Section 70(6) of the Scotland Act prevents Scottish legislation imposing a requirement to prepare accounts on cross-border public authorities, where other legislation already requires them to prepare accounts to be examined either by the Auditor General for Scotland or the Comptroller and Auditor General. Section 35(1)(b) deems the Agency to be a cross-border public authority for the purposes of section 70(6), so the prohibition on Scottish legislation duplicating accounting requirements will apply in relation to the Agency. As a UK non-Ministerial department, the Agency will be subject to audit by the National Audit Office. Schedule 4 sets out the detailed accounts and audit arrangements for the Agency.
135. *Subsection (2)* clarifies that it is within the legislative competence of the Scottish Parliament to remove, alter or confer relevant functions (as defined by *subsection (5)*, i.e. matters within the Agency's general remit) of the Agency within its own jurisdiction. The reservation in paragraph 1 of Schedule 5 to the Scotland Act, which reserves to the UK Government matters relating to the constitution does not apply even though the Agency is constituted as a UK Crown body.

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136. *Subsection (3)* makes clear that the legislative competence of the Scottish Parliament is not affected in any other way by this section.
137. *Subsection (4)* similarly provides for the relevant functions of the Agency in Northern Ireland to be recognised as falling within the competence of the devolved authority in Northern Ireland. The Agency's relevant functions in relation to Northern Ireland are to be regarded as functions of a Minister of the Crown and therefore not included as excepted matters by virtue of being part of the Crown.

### ***Section 36: Interpretation***

138. This contains definitions of terms used in the Act.
139. *Subsection (3)* provides a gloss to the phrase 'interests of consumers of food'. The definition makes clear that matters such as labelling are included within the scope of this term. The saving in brackets 'without prejudice to the generality of that expression' makes clear that the term is not limited solely to the matters mentioned in the definition.
140. Powers of entry in the Act are related to 'premises'. *Subsection (5)* provides that if the definition of 'premises' in the Food Safety Act 1990 is extended by an Order under section 1(3) or the corresponding Northern Ireland provision of that Act to include ships and aircraft of a specified description, this extended definition may also be applied to functions under this Act.
141. It is important to read this Act in conjunction with the Food Safety Act 1990 since that Act defines many important concepts, including 'food' itself.

### ***Section 37: Subordinate legislation***

142. This section groups together the general provisions relating to the manner in which the powers in the Act to make subordinate legislation may be used. These are the powers:
- to modify statutory bars on disclosure of information to the Agency (in section 25);
  - to establish a notification system for food borne diseases (in section 27);
  - to apply the Food Safety Act 1990 or the corresponding Northern Ireland legislation to feedingstuffs (in sections 30 and 31); and
  - to make Orders in Council relating to the constitution of the Agency and the consequences of the Scottish Parliament or Northern Ireland Assembly removing functions from the Agency (in sections 32 and 33).

### ***Section 38: Application of Act to Crown***

143. This section applies the requirements and powers contained in the Act (including powers of entry) to activities and premises carried out or used by or on behalf of the Crown (but does not apply to the Queen in her private capacity). This reflects the provisions of the Food Safety Act 1990, which is applied to the Crown by section 54 of that Act.
144. *Subsection (3)* permits the Secretary of State to certify that powers of entry should not be exercised in relation to specified premises of national security importance, such as defence establishments.

### ***Section 39: Financial provisions***

145. This section provides for the financing of the Agency. Because the Agency is a UK body operating in a devolved area, it is to be funded not only from money provided by Parliament, but also from the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly. In practice, as a general rule, it is envisaged that the costs of the Agency's main headquarters and staff, and its activities in England, will be



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met by money provided by Parliament, and the costs of its executive bodies in Scotland, Wales and Northern Ireland, and of activities carried out on the ground in those parts of the UK, will be funded by them. The section ensures that devolved legislatures as well as Parliament can make the contributions to the expenditure of the Agency, and deals with the treatment of the Agency's receipts (both from statutory charges - in practice this is likely to be mostly charges for the Meat Hygiene Service - and miscellaneous income such as charges for documents produced by the Agency).

146. *Subsection (1)* contains provisions authorising payment by Parliament of increases in Ministerial expenditure and spending under other Acts by virtue of the Act.
147. *Subsection (2)* provides for Parliament to meet the expenditure of the Agency, other than that part which is provided by the devolved authorities. It should be noted that the Agency (as a Government Department) will be funded directly by Parliamentary 'Vote', rather than by means of a grant paid by a Minister.
148. *Subsection (3)* provides the legal authority to the devolved administrations to pay money to the Agency and removes any doubt as to whether this would be within their devolved competence.
149. *Subsection (4)* deals with the Agency's receipts, in particular receipts from the performance of statutory functions, such as charges for meat hygiene enforcement. Under existing legislation, such receipts are normally paid into the Consolidated Fund, though (subject to certain criteria being satisfied) the Treasury may direct that it can be 'appropriated in aid' to the Department or body concerned. This subsection clarifies that receipts are payable into the Consolidated Fund, unless they are
  - actually provided by Parliament (and sums appropriated in aid count as this);
  - received by the Agency from the Scottish, Welsh and Northern Ireland administrations;
  - payable to the National Assembly for Wales or into the Consolidated Funds for Scotland or Northern Ireland, as the case may be, by virtue of a provision in legislation; or
  - determined to be payable to Wales, Scotland or Northern Ireland under subsection (5), explained below.
150. The Agency is also likely to have other minor non-statutory receipts, such as income from charges for consultancy or other services provided on request. *Subsection (5)* deals with this by providing a mechanism for the Treasury and the devolved administrations, acting jointly, to determine that receipts be payable to the Scottish or Northern Ireland Consolidated Fund, or the National Assembly for Wales, (rather than to the Consolidated Fund) as appropriate according to the nature of the receipt.
151. It should be noted that in general, sums received by the Agency, whether under Statutory Charges or from miscellaneous fees, are likely to be of the type it will be allowed to retain as appropriations or negative public expenditure. Thus the payments into the various funds described above will be nominal payments, for accounting purposes only.

***Section 40: Minor and consequential amendments and repeals***

152. As in section 18 (see note), amendments to existing Acts made by Schedule 5 are to be treated as pre-commencement enactments for the purposes of the Scotland Act 1998.
153. *Subsection (3)* ensures that the National Assembly for Wales (Transfer of Functions) Order 1999, which transfers functions under various Acts to the National Assembly for Wales, takes account of any amendments to those Acts made by this Act. The amendments made by this Act are therefore treated as if made prior to the Order coming into force.

***Section 41: Transfer of property, rights and liabilities to the Agency***

154. This section provides a transitional power to enable the Secretary of State or devolved authorities to make arrangements to transfer property, rights and liabilities to the Agency. This power is expected to be used, for example, at the time of the Agency's establishment to transfer uncompleted research contracts or relevant intellectual property rights.

***Section 42: Power to make transitional provision etc***

155. *Subsections (1) and (2)* provide for the Secretary of State to make regulations to deal with any transitional or consequential changes to legislation needed as a result of this Act.
156. *Subsection (3)* makes similar provision for Scotland and Northern Ireland.

***Section 43: Short title, commencement and extent***

157. *Subsection (3)* deems this Act to be part of the Food Safety Act 1990 for the purposes of section 58 of the 1990 Act. Section 58 has two effects.
158. First, in relation to territorial waters (i.e. inland waters and the sea, generally out to 12 miles), it deems the authority responsible for any food premises (for example on gas rigs or other fixed structures) to be the same as that on the adjoining land. This provision also determines whether a structure lies in England, Scotland or Wales.
159. Secondly, section 58 allows the Food Safety Act to be extended by Order to structures outside territorial waters, but within areas which are British for oil and gas exploration purposes. No such Order has yet been made, but were it to be made, then the Agency would, by virtue of this section, obtain appropriate powers in relation to the carrying out of surveys and monitoring of the work of enforcement authorities at installations in the British sector.
160. *Subsection (4)* makes transitional modifications until a day is appointed for the coming into operation of parts II and III of the Northern Ireland Act 1998.

***Schedule 1: Constitution etc. of the Agency***

161. This Schedule sets out detailed provisions on the constitution, staffing and operation of the Agency. The term 'the Agency' means the Food Standards Agency appointed in accordance with section 2.
162. *Paragraph 2* provides that members of the Agency can be re-appointed to the Agency, including to posts they already hold or have held in the past, including those of chairman and deputy chairman.
163. *Paragraph 4* describes the circumstances in which the appropriate authorities may dismiss a member of the Agency. They have to satisfy themselves that the person is failing to perform his duties, has been declared bankrupt, is unable to meet his debts or is otherwise unfit to carry out his functions.
164. *Paragraph 6* covers the circumstances in which the appropriate authorities may pay compensation to a member of the Agency who ceases to hold office. It is up to the appropriate authorities to make such a decision and thereafter the Agency is under a duty to pay whatever sum of money is decided.
165. *Paragraph 7* disqualifies members of the Agency from standing as Members of Parliament or the Northern Ireland Assembly. Disqualification from membership of the European Parliament also flows automatically from this provision. Whether members should be disqualified from the Scottish Parliament and the National Assembly for Wales is a question for those bodies.

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166. *Paragraph 8* gives the Agency a power to appoint other staff, subject to the requirement that the Minister for the Civil Service approve their numbers and terms and conditions. The staff will be civil servants.
167. *Paragraph 9* provides for the establishment of a register of members' interests and the publication of the entries recorded in it.
168. *Paragraph 11* is an evidential provision: it provides that any document which appears to be signed or sealed by or on behalf of the Agency is treated as having been properly signed or executed unless shown not to be.
169. *Paragraph 12* sets out to whom the Agency may delegate. *Subparagraph (2)* preserves the rule whereby the staff of a Minister (or in this case a non-Ministerial department) may act on his/its behalf.

### ***Schedule 2: Advisory Committees***

170. This Schedule supplements the provisions in section 5 on advisory committees. It provides for the appointment of members, terms of reference, remuneration and expenses of committees for Scotland, Wales, Northern Ireland and England, and for specialist committees.
171. *Paragraph 7* concerns the transfer of existing non-statutory advisory committees. A number of non-statutory independent advisory committees currently exist prior to the establishment of the Agency which deal with food related matters. They include the Advisory Committee on the Microbiological Safety of Food (ACMSF), the Advisory Committee on Novel Foods and Processes (ACNFP), the Food Advisory Committee (FAC) and the Consumer Panel. Under this paragraph the Secretary of State or the Minister of Agriculture, Fisheries and Food may direct that these committees be treated as if they were established by the Agency in accordance with section 5 after consulting the Agency and any other authorities to whom the committees in question report.
172. *Paragraph 8* provides that the Agency may establish joint committees with another authority. Current examples of joint committees include the Spongiform Encephalopathy Advisory Committee (SEAC), the Committee on the Medical Aspects of Food and Nutrition Policy (COMA), the Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment (COT) and the Advisory Committee on Animal Feedingsuffs.

### ***Schedule 3: The Agency's functions under other enactments***

173. As explained in the note on section 18, the amendments in Schedules 3 and 5 are to Acts passed before the devolution Acts came into force. Thus, although many powers in relation to food, the environment, and agriculture have been devolved to the Scottish Administration, the amendments still refer to the Secretary of State and Minister of Agriculture, Fisheries and Food alone and not to Scottish Ministers. However, where the relevant functions have in fact been devolved, the references to the Secretary of State are intended to take effect in relation to Scotland as if they were references to Scottish Ministers. In general this will be the automatic result of the Scotland Act, but the powers under that Act will be available to make any further changes as necessary.

### **Part I: Functions under the Food Safety Act 1990**

174. This Part describes the functions under the Food Safety Act 1990 which will be taken over by the Agency. The amendments to that Act which give effect to this are detailed in Schedule 5.
175. These functions allow the Agency to act as an enforcement authority in similar circumstances to those in which the Minister of Agriculture, Fisheries and Food, the Secretaries of State for Health, Scotland and Wales can act (the option of allowing any of the Ministers to be an enforcement authority is retained). The powers of the

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Secretaries of State for Scotland and Wales are now exercised by Scottish Ministers and the National Assembly for Wales respectively. These provisions do not therefore create new powers. In addition, the Agency may grant consents or give directions in relation to emergency control orders (see also section 17); issue Codes of Practice and give directions for their enforcement (in both cases after consulting the Secretary of State); require returns of information from food authorities; exercise default powers; and undertake consultation on proposals for regulations and orders on behalf of the Secretary of State.

176. In general, the functions of the Minister of Agriculture, Fisheries and Food will be transferred to the Secretary of State for Health, although the Act retains the option for the Minister to be an enforcement authority. The Minister's current enforcement functions (for example on dairy and meat hygiene) will be transferred to the Agency by amending relevant secondary legislation.

## **Part II: Functions under the Food Safety (Northern Ireland) Order 1991**

177. This part makes provision parallel to that in Part I in relation to Northern Ireland.

## **Part III: Other functions**

178. *Paragraph 15*: Section 4 of the Medicines Act 1968 provides for the establishment of committees to advise on various aspects of the licensing of medicines (including veterinary medicines). *Subparagraph (2)* amends this provision to provide for the Agency to nominate a member of any committee established under it dealing with veterinary medicinal products for appointment by the Secretary of State.
179. This provision will in practice apply to the Veterinary Products Committee, which considers applications for authorisation of new veterinary medicines and related products. (It should be noted that, as with the Advisory Committee on Pesticides, it is expected that the Agency will also provide an adviser to this committee and its sub-committee.)
180. Section 129 of the Medicines Act 1968 provides the general procedure for the making of regulations and orders under that Act. *Subparagraph (3)* amends section 129 to specify that the Agency must be consulted on any new regulations concerning veterinary drugs or medicated feedingstuffs.
181. *Paragraph 16, subparagraphs (1) and (2)* set out the Agency's functions in relation to emergency control orders made under the Food and Environment Protection Act 1985 (FEPA 1985), conferred by amendments to sections 2 and 3 of that Act. Consequential amendments are set out in more detail in Schedule 5.
182. *Subparagraphs (3) to (5)* amend Parts II and III of FEPA 1985, which relate respectively to the licensing of deposits at sea and of pesticides. The amendments introduce a requirement for the Agency to be consulted on licensing matters under Part II (dumping at sea), and a more general requirement for consultation of the Agency on matters covered by Part III (pesticides).
183. Powers are available under Part II of the Food and Environment Protection Act 1985 for Ministers to license the deposit of substances and articles in the sea and the loading of vessels with materials destined for incineration at sea. For these purposes, 'licensing authority' means the Minister of Agriculture, Fisheries and Food and the Secretary of State (in practice the Secretary of State for the Environment, Transport and the Regions) acting jointly in relation to England and Wales; and the Scottish Ministers in relation to Scotland. They may also make orders which specify types of operation which do not need a licence or which specify the conditions under which they may be exempt.
184. The purpose of such powers is primarily to protect the marine environment and to prevent interference with legitimate uses of the sea, and it is proposed that the powers should remain with Ministers as defined. However, in view of the potential effects of

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dumping at sea on the safety of food obtained from it, subparagraph (3) amends the powers to grant exemption from the requirement for licences to require that the Agency be consulted before any exemptions are made or conditions for exemptions set down in law.

185. *Subparagraph (4)* requires the licensing authority to consult on specific applications and on the general way in which food safety should be addressed when considering licence applications. The licensing authority is obliged to take the Agency's advice into account.
186. Part III of FEPA 1985 concerns the licensing of pesticides and related products for the purposes of protecting human, animal and plant health, safeguarding the environment and securing safe, efficient and humane methods of controlling pests. Primary responsibility for such licensing lies with Agriculture, Health and Environment Ministers. Section 16 of the Act relates to the requirement on Ministers to consult the Advisory Committee on Pesticides (ACP) on proposals:
- for regulations;
  - for giving, revoking or suspending approvals of pesticide products;
  - for conditions to which they are considering making approvals subject.
187. *Subparagraph (5)* amends this provision to require Ministers to consult the Agency as well as the ACP on proposals for regulations, and from time to time on the general policy towards pesticides approvals. These are similar to the provisions concerning veterinary products outlined in the notes to section 29 and Schedule 3, paragraph 15 above.
188. In practice, the amendment means that the Agency will be formally consulted by officials from the Pesticides Safety Directorate on policy advice that they intend to submit to Ministers on any of the above three matters. It will also be achieved through the provision by the Agency of an assessor to the ACP and its sub-committee (the assessor's duty is to contribute to the assessment and authorisation of pesticides). This supplements the provision in *subparagraph (6)* below.
189. *Subparagraph (6)* amends FEPA 1985 to provide for the Agency to nominate a member of the Advisory Committee on Pesticides.
190. *Paragraphs 17 and 18* amend Part VI of the Environmental Protection Act 1990 (EPA 1990), which is concerned with preventing or minimising any damage to the environment which may result from the escape or release of genetically modified organisms (GMOs). Lead responsibility for this area of policy lies with the Secretary of State for the Environment, Transport and the Regions. However, the Secretary of State for Health could (through normal machinery of government arrangements) take part in the decision-making process where appropriate.
191. The amendments are designed to give the Agency a role in relation to regulations controlling the import, acquisition, release or marketing of any GMO and related matters. Paragraph 17 provides a new option allowing such regulations to specify that the Agency may act jointly with the Secretary of State in addition to the Secretary of State acting alone in considering any exemptions from the risk assessment or notification requirements for the matters mentioned above (section 108(7)) and exempting from the consent requirements relating to the same actions (section 111(7)).
192. *Paragraph 18* modifies section 126 of the EPA 1990, which provides more generally for regulations under Part VI to be made jointly by the Secretary of State and the Minister of Agriculture, Fisheries and Food, where the regulations concern any matter with which the latter is concerned. The amendment made by this section does not alter this requirement, since MAFF will retain an interest in the economic and environmental implications of GMOs for the farming and food industries after the Agency comes into being.



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193. It does however introduce mechanisms to ensure that the Agency can exercise the same degree of influence as MAFF does now. In particular, the Agency must be consulted before any regulations on the deliberate release of GMOs are made where these relate to matters with which the Agency is concerned.
194. The amendment to section 126 would have the following effect.
- *Subsection (1)* of this new section continues the Minister of Agriculture, Fisheries and Food's role in relation to regulations under Part VI of the EPA 1990. It does however exclude him from the power to make regulations relating to fees and charges under section 113 of that Act (but see subsection (6) below).
  - *Subsection (2)* preserves the Minister of Agriculture, Fisheries and Food's role in all the functions under Part VI (other than the power to make regulations, which is dealt with under subparagraph (1) above).
  - *Subsection (3)* applies in relation to the powers (other than powers to make regulations):
    - under section 108(8), to require certain persons to apply for authorisation to release, market, import or acquire GMOs;
    - under section 110, to prohibit certain persons from releasing, marketing, importing or acquiring GMOs if it is believed they risk damaging the environment.
  - The effect of the amendment is that these powers must now be exercised jointly by the Secretary of State, the Agency, in relation to matters connected with food safety and other interests of consumers in relation to food, and the Minister of Agriculture, Fisheries and Food where he is also concerned with the matter in question.
  - *Subsection (5)* introduces a new requirement for the Agency to be consulted:
    - before any regulations under Part VI of EPA 1990 are made, other than regulations relating to fees and charges under section 113;
    - before any consent relating to deliberate releases is issued (under section 111) or the conditions and limitations on the granting of a consent are varied (under section 112).
  - *Subsection (6)* requires the Secretary of State to take account of costs incurred by the Minister of Agriculture, Fisheries and Food and the Agency in drawing up charging scheme under section 113 of the EPA 1990.
  - *Subsection (7)* qualifies the subsections of this section that deal with joint action and consultation. Essentially, it provides that any regulatory power or function exercised under this subsection is not rendered invalid if there is subsequently any question as to whether it should have been done (or not done) jointly with the Minister of Agriculture, Fisheries and Food or the Agency (or both), rather than by the Secretary of State acting alone.
195. *Paragraphs 19* and *20* amend the Genetically Modified Organisms (Northern Ireland) Order 1991 to make corresponding provision for Northern Ireland to that made by the amendments to the Environment Protection Act 1990 in paragraphs 17 and 18.
196. *Paragraph 21* sets out the Agency's right to be consulted on authorisations to dispose of radioactive waste. The detailed amendments to the Radioactive Substances Act 1993 are made in Schedule 5.

***Schedule 4: Accounts and audit***

197. This Schedule sets out the arrangements for the Agency's accounts and audit.

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198. As a UK Government department, the Agency will automatically be subject to the requirements of the Exchequer and Audit Departments Acts, under which it is required to produce appropriation accounts for Parliament in respect of monies voted to it by Parliament, which are audited by the Comptroller and Auditor General. However, section 39 of the Act provides for the Agency to receive money not only from Parliament but also from the Scottish Parliament, National Assembly for Wales, and Northern Ireland Assembly. The Agency must be able to account to those bodies for the expenditure of the money provided by them, and as this is not covered by existing legislation, specific provision is made here. In addition, section 35 states that the Agency is to be treated as a cross border public authority for the purposes of section 70(6) of the Scotland Act 1998. This means that the arrangements for accounting to the Scottish Parliament may not be made in Scottish legislation, and therefore provisions are included here for accounts to be made to the Scottish Parliament.
199. *Paragraph 1* defines the relevant authorities and bodies with an interest in the Agency's accounts (i.e. the devolved administrations and the Treasury, and the devolved legislatures and the House of Commons).
200. *Paragraph 2* states that copies of the appropriation accounts, which the Agency is already required to produce for Parliament by virtue of the Exchequer and Audit Departments Act 1866, must be sent to the relevant authorities for Wales, Scotland and Northern Ireland, who will present them to the Scottish Parliament and the Northern Ireland Assembly as the case may be. This is so that they are informed of the overall financial position of the Agency – final scrutiny of the appropriation accounts remains the task of the House of Commons, through the Public Accounts Committee.
201. *Paragraph 3* deals with the Agency's accounts for the expenditure of the sums provided by the devolved authorities in accordance with section 39 of the Act (this includes income from statutory charges imposed in their areas). The relevant authority for each of the parts of the UK may direct the form of the accounts for their part of the UK but must first consult the Agency and the other relevant authorities. The purpose of this is to achieve consistency between the form of accounts provided to each body, thereby assisting in the preparation of the consolidated accounts (see below). The accounts will be audited on behalf of each of the devolved legislatures by the Comptroller and Auditor General. Audited accounts must be sent to the relevant authority whose money they concern, which will present them to its legislature for scrutiny. Copies of the accounts are sent to the other devolved authorities and the Treasury, and these bodies must present them to the other legislatures and the House of Commons, essentially for information.
202. *Paragraph 4* provides for consolidated accounts to be prepared in a form directed by the Treasury after consulting the Agency and other relevant authorities, and send them to the Comptroller and Auditor General to be audited and laid before the House of Commons. The consolidated accounts will bring together into a single document all the parts of the UK Agency's accounts in order to give Parliament a view of its overall financial position. Again, copies of the accounts are sent to the devolved authorities for presentation to the devolved legislatures for information.
203. *Paragraph 5* deals with trading accounts produced under section 5 of the Exchequer and Audit Departments Act 1921. So far as the Agency is concerned, it is envisaged that this provision will be the basis for the separate Meat Hygiene Service accounts. Since the Meat Hygiene Service will operate across GB, the Treasury is required to seek the consent of the other relevant authorities and consult the Agency before directing the form of these accounts. However, it is not necessary to seek the consent of any relevant authority not affected by the operations in question (i.e. Northern Ireland is not involved since the MHS does not operate in Northern Ireland).
204. *Paragraph 6* ensures that the Comptroller and Auditor General has the power to make reports to the devolved bodies for the purposes of value for money audit under the National Audit Act 1983.

***Schedule 5: Minor and Consequential Amendments***

205. This Schedule makes minor amendments to other legislation which are a consequence of the creation and new responsibilities of the Agency, and also to provide for the functions of the Agency provided in Schedule 3.
206. *Paragraphs 1 and 2* amend the relevant legislation on agricultural statistics that applies in Northern Ireland and Scotland, and has the same purpose as *paragraph 5* (see below).
207. *Paragraph 3* amends the Parliamentary Commissioner Act 1967 by adding the Food Standards Agency to the list of bodies subject to the jurisdiction of the Parliamentary Commissioner for Administration.
208. *Paragraph 4* amends the Trades Descriptions Act 1968. Orders made under that Act concerning food or feedingstuffs will in future be made jointly by the President of the Board of Trade, the Secretary of State for Health (rather than the Minister of Agriculture, Fisheries and Food), and the Scottish, Welsh and Northern Ireland Ministers if appropriate. The Agency will also be consulted. In practice, this provision is likely to be used only rarely since these provisions are largely duplicated by powers in the Food Safety Act 1990 and the Agriculture Act 1970.
209. *Paragraph 5* provides that information on agricultural holdings obtained for the purposes of compiling the agricultural and horticultural census in England and Wales may, at the discretion of the Minister of Agriculture, Fisheries and Food, be disclosed to the Agency for purposes connected with carrying out its functions. This would allow the Agency, as a non-Ministerial government department, to be treated in the same way as Ministerial government departments, to which disclosure is currently possible under section 3(1) of the Agricultural Statistics Act 1979.
210. The Agency would use information obtained in this way to assist it in planning food safety surveys on farms (in preparing for a survey of the presence of salmonella in poultry, for example, it would need to know where poultry breeding took place). The information would also assist the Agency in considering applications for industrial discharge authorisations, on which it will be a statutory consultee, as well as in dealing with emergency contamination incidents. In practice, the Agency is likely to use such data infrequently and on a limited scale.
211. *Paragraph 6* amends the Food and Environment Protection Act 1985 (FEPA 1985) Part I.. It takes account of the changes already made to FEPA 1985 by the *Scotland Act 1998 (Modification of Functions) Order 1999 (SI 1756)*, which made textual changes to facilitate the transfer of relevant functions to Scottish Ministers. As a consequence of these changes it is necessary for subparagraphs (2) and (5) to come into force on the coming into force of this Act. These preserve the role of the Secretary of State for Health in England and Wales, and the Department of Agriculture in Northern Ireland, to make emergency orders (in Scotland this function has transferred to Scottish Ministers). On coming into force of the rest of the Act, references to the Minister of Agriculture, Fisheries and Food are removed, so the functions in Part I of FEPA 1985 may only be exercised by the Secretary of State (or the Department of Health and Social Services in Northern Ireland).
212. *Paragraphs 7, 8 and 10-21* amend the Food Safety Act 1990, removing references to the Minister of Agriculture, Fisheries and Food. They also provide for the powers described in Part I of Schedule 3 to be exercised by the Agency itself.
213. *Paragraphs 9 and 22* concern the Isles of Scilly. Due to the slightly anomalous position of the Scilly Isles in the local government structure, the 1990 Act provided that its application to the Isles could be subject to such exceptions and modifications as Ministers may direct. In practice however, the only modification which has been necessary is to provide for the council of the Isles of Scilly to be the enforcement authority in the Isles. This has now been made explicit by amendment to s 5 of the

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1990 Act (Schedule 5 paragraph 7), so s 57(1) is no longer necessary and ceases to have effect (paragraph 22).

214. *Paragraph 10* amends section 6 (enforcement) of the Food Safety Act 1990. It provides for the Secretary of State to direct that a duty imposed on an enforcement body under the Act should instead be discharged by himself or by the Minister of Agriculture, Fisheries and Food or by the Agency. It also provides for the Agency to be one of the bodies which may be named as an enforcement body in regulations made under section 6 of the 1990 Act (it is envisaged that this power will be used for instance in relation to the Meat Hygiene Service, which will become part of the Food Standards Agency). Amendments also provide for the Secretary of State to take over a prosecution begun by another person under the Food Safety Act 1990 (this replaces a similar provision in the current Act) or for the Agency to take over such proceedings with the consent of that person or at the direction of the Secretary of State.
215. *Paragraph 11* amends section 13 of the Food Safety Act 1990 (emergency control orders). Power to make emergency control orders transfers to the Secretary of State, although this may be delegated to the Agency under section 17 of this Act. The amendments in paragraph 9 allow either the Agency or the Secretary of State to consent to exemptions, give directions to prevent food subject to an order being used commercially, and to recover costs from persons failing to comply with an order.
216. *Paragraph 16* concerns offences by Scottish partnerships. Section 36 of the Food Safety Act 1990 provides that, where an offence under the Act committed by a body corporate is proved to have been committed with the consent or connivance of (or be attributable to any neglect on the part of) a director, manager, secretary or similar office holder of the body, or by a person purporting to act in such a capacity, that person (as well as the body corporate) is deemed guilty of the offence. It has been held that in Scotland the words “body corporate” include a partnership which in Scots law has an identity separate from that of the individual partners. This section adds a new Section 36A to provide that individual partners may be charged along with the partnership in respect of any offence committed under the Act.
217. *Paragraph 17* amends section 40 of the Food Safety Act 1990 in the following ways. *Subparagraph (2)* inserts a new subsection (1A) to give the Agency power, after consulting the Secretary of State, to issue a direction to a local authority to ensure that it complies with a statutory code of practice issued under Section 40. *Subparagraph (3)* amends section 40(2)(b) to require local authorities to comply with a direction of the Agency, but the power of Ministers to direct is removed. *Subparagraph (4)* amends section 40(3) so that the Agency rather than Ministers can obtain a court order forcing a local authority to take appropriate action where it fails to comply with a direction but it must consult the Secretary of State before doing so. *Subparagraphs (5) and (6)* amend section 40(4) of the Food Safety Act, concerning consultation of interested parties before issuing codes of practice. The Secretary of State is required to have regard to the Agency’s advice on these matters. The requirement to consult relevant organisations is retained, although consultation carried out by the Agency may be taken as meeting this obligation.
218. *Paragraph 18* amends section 41 of the Food Safety Act 1990 by removing from the Minister of Agriculture, Fisheries and Food the power to require local authorities to provide information that is relevant to their enforcement work carried out under the Act and assigns that power to the Agency.
219. *Paragraph 19* amends section 42 of the Food Safety Act 1990 by empowering the Secretary of State to direct the Agency (as an alternative to designating another local authority) to carry out the enforcement functions of a local authority that has failed to meet its enforcement obligations.
220. *Paragraph 20* amends section 45 of the Food Safety Act. Shortly after the enactment of the 1990 Act, the Parliamentary Joint Committee on Statutory Instruments expressed

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some doubt as to whether section 45 allowed for charges to be imposed on application for a licence, rather than on its granting. This amendment makes it clear that section 45 enables Ministers to provide for charges to be imposed on application (for example, for a licence) and not just on completion of a transaction.

221. *Paragraph 21* makes amendments to section 48 of the Food Safety Act 1990, concerning consultation before legislation is made under that Act by the Secretary of State. These are similar in effect to those described in paragraph 17(5) and (6) above.
222. Schedule 1 to the Food Safety Act 1990 supplements the subject areas in which regulations may be made by Ministers under section 16 of that Act. *Paragraph 23* provides additionally for regulations to control substances and activities relating to the farm production of food sources\* which may have an impact on food safety or otherwise affect the interests of consumers in relation to food. The effect of this amendment is therefore to extend the scope of the Food Safety Act 1990 to cover the whole of the primary production end of the food chain. However, these powers will normally be used in relation to on-farm activity only where existing powers available to, for example, Agriculture or Environment Ministers are unavailable or insufficient.
  - *Food source* is defined in the Food Safety Act 1990 (section 3) as any growing crop or live animal, bird or fish from which food is intended to be derived (whether by harvesting, slaughtering, milking, collecting eggs or otherwise).
223. *Paragraph 25* revokes any byelaws made (or having effect as if made) under section 15 of the Food Act 1984 and which were continued in force under the Food Safety Act 1990. That Act abolished the power to make food byelaws, subject to a provision which saved those in force immediately before the Act came into force. Byelaws related to miscellaneous matters are no longer needed in view of the current legal provisions for food safety and standards.
224. *Paragraphs 26 to 42* make minor or consequential amendments to the Food Safety (Northern Ireland) Order 1991 broadly similar to the amendments made to the Food Safety Act 1990 by paragraphs 7 to 25.
225. *Paragraph 43* amends provisions of the Radioactive Substances Act 1993 (RSA 1993) to make the Agency the statutory consultee of the Environment Agency (EA) and the Scottish Environment Protection Agency (SEPA) on authorisations to dispose of radioactive waste, as well as on the revocation and variation of such authorisations. This will enable the Agency to influence the control of an important potential hazard to food safety. The Agency will replace the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales in these roles as far as England and Wales are concerned and the Secretary of State for Scotland in relation to authorisations issued by SEPA.
226. *Subparagraph (2)* amends the relevant provisions of RSA 1993 to make the Agency the statutory consultee on authorisations in place of Ministers.
227. *Subparagraph (3)* does the same in respect of the revocation and variation of authorisations.
228. *Subparagraphs (4) and (6)* remove references to the Minister of Agriculture, Fisheries and Food from those parts of the RSA 1993 where he no longer has a function.
229. *Subparagraph (5)* amends section 25 of RSA 1993. That section allows the Secretary of State for the Environment, Transport and the Regions to restrict access to information in applications under the Act on grounds of national security. The section (prior to the amendment made by this Act) makes it clear that this power did not release the EA or SEPA from their duty to consult Ministers on applications for discharges and did not apply to any information sent by the EA or SEPA to Ministers. The amendment made by this paragraph simply relates the provision to the Agency rather than to Ministers, to ensure that the Agency is able properly to exercise the consultation function given to it by subsections (2) and (3).



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230. Before setting charges in relation to licence applications, including those under the RSA 1993, the Environment Agencies are currently obliged to take into account the costs and expenses of the Minister of Agriculture, Fisheries and Food and certain of those of the Scottish and Welsh administrations (i.e. those performed by the Scottish and Welsh administrations which would be performed by the Minister of Agriculture, Fisheries and Food in England). The Minister's and Secretary of State's functions under the RSA 1993 are being transferred to the Agency, and, accordingly, the amendments to Environment Act 1995 made in *paragraph 44* specify that it is the Agency's costs and expenses that must be taken into account.
231. As the Minister of Agriculture, Fisheries and Food will no longer have responsibilities in this area *subparagraph (4)* removes the need for that Minister to approve any relevant charging proposals.
232. Fees charged by the Environment Agencies for licences may include an element to meet the costs incurred by the Agency. *Subparagraphs (5) and (6)* allow for these sums to be transferred from the Environment Agency to the Agency after collection.
233. *Paragraph 45* amends Schedule 5 of the Government of Wales Act 1998 to add the Agency, and its advisory committee for Wales, to the list of bodies whose members and staff can be required to attend or produce documents for the National Assembly for Wales.

### COMMENCEMENT

234. The Act will be commenced by statutory instrument. The provisions relating to appointments will be commenced as soon as possible and the main provisions relating to the Agency's functions and powers will be commenced in time for the Agency to begin work on 1 April 2000.

### HANSARD REFERENCES

235. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
<b>House of Commons</b>		
Introduction	10 June 1999	Vol 332 No 100 Col 797
Second Reading	21 June 1999	Vol 333 No 107 Cols 786-861
Committee	29 June 1999	Hansard Standing Committee B
	1 July 1999	
	6 July 1999	
	8 July 1999	
	13 July 1999	
	15 July 1999	
Report and Third Reading	22 July 1999	Vol 335 No 129 Cols 1359-1457
<b>House of Lords</b>		
Introduction	23 July 1999	Vol 604 No 125 Col 1250
Second Reading	30 July 1999	Vol 604 No 130 Cols 1784-1828
Committee	12 October 1999	Vol 605 No 132 Cols CWH1-62
	13 October 1999	Vol 605 No 133 Cols CWH65-142

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<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
	14 October 1999	Vol 605 No 134 Cols CWH145-174
Report	28 October 1999	Vol 606 No 144 Cols 386-454
Third Reading	3 November 1999	Vol 606 No 148 Cols 882-914
<b>Commons consideration of Lords amendments</b>		
	8 November 1999	Vol 337 No 146 Cols 829-856

<b>Royal Assent</b> - 11 November 1999	House of Lords: Vol 606 No 144 Col 1469
	House of Commons: Vol 337 No 154 Col 1306