



Food (Scotland) Act 2015

2015 asp 1

PART 1

FOOD STANDARDS SCOTLAND

Enforcement action

23 Setting performance standards

- (1) For the purpose of carrying out its function under section 3(1)(e), Food Standards Scotland may determine standards of performance for enforcement authorities in enforcing food legislation.
- (2) Different standards may be determined in relation to—
 - (a) different enforcement authorities (or types of enforcement authorities),
 - (b) different food legislation (or types of food legislation).
- (3) Food Standards Scotland may vary or revoke any standards determined under subsection (1).

24 Reporting own enforcement activities

- (1) Food Standards Scotland must include in each annual report it prepares a report on—
 - (a) its activities during the financial year to which the report relates in enforcing any food legislation for which it is the enforcement authority, and
 - (b) its performance in relation to any standards determined under section 23(1) applying to those activities.
- (2) In this section, “annual report” means a report prepared under section 15(1).

25 Reporting on enforcement action by others

- (1) In consequence of the exercise of its function under section 3(1)(e), Food Standards Scotland may make a report to any enforcement authority on the authority’s performance in enforcing any food legislation.

- (2) A report under subsection (1) may include guidance as to action which Food Standards Scotland considers—
 - (a) is necessary to enable the enforcement authority to meet any standards determined under section 23(1) which apply, or
 - (b) otherwise, would help to improve the performance of the authority.
- (3) Food Standards Scotland may direct an authority to which a report has been made under subsection (1)—
 - (a) to arrange for the publication (in such manner as may be specified) of—
 - (i) the report, or
 - (ii) specified information relating to the report, or
 - (b) to notify Food Standards Scotland (within such period as may be specified) of what action the authority has taken or proposes to take in response to the report.
- (4) In subsection (3), “specified” means specified in the direction.

26 Power to request information in relation to enforcement action

- (1) For the purpose of carrying out its function under section 3(1)(e) in relation to any enforcement authority, Food Standards Scotland may require a person mentioned in subsection (2)—
 - (a) to provide Food Standards Scotland with any information which it has reasonable cause to believe that the person is able to give, or
 - (b) to make available to Food Standards Scotland for inspection any information in a recorded form which it has reasonable cause to believe is held by that person or is otherwise within that person’s control (and where such information is in electronic form, to make it available in a legible form).
- (2) A requirement under subsection (1) may be imposed on—
 - (a) the enforcement authority, or any member, officer or employee of the authority, or
 - (b) a person subject to any duty under food legislation (being a duty enforceable by an enforcement authority) or any officer or employee of such a person.
- (3) Food Standards Scotland may copy any information made available to it in pursuance of a requirement under subsection (1)(b).

27 Offences in relation to section 26

- (1) A person commits an offence if the person—
 - (a) fails without reasonable excuse to comply with any requirement imposed under section 26(1), or
 - (b) in purported compliance with a requirement imposed under section 26(1)—
 - (i) provides information which the person knows to be false or misleading in a material way, or
 - (ii) recklessly provides information which is false or misleading in a material way.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

28 Powers for persons monitoring enforcement action

- (1) Any member of staff or other individual may, if authorised to do so by Food Standards Scotland, exercise the powers specified in subsection (2) for the purpose of carrying out the function under section 3(1)(e) in relation to any enforcement authority.
- (2) The powers are—
 - (a) entering any premises mentioned in subsection (3) at any reasonable time in order to inspect the premises or anything which may be on them,
 - (b) taking samples of any articles or substances on the premises,
 - (c) inspecting and copying any information in a recorded form on the premises (and where such information is in electronic form, requiring the information to be produced in a legible form in which it may be copied or taken away),
 - (d) requiring any person present on the premises to provide such facilities or information and such other assistance as the authorised person reasonably requests.
- (3) The premises in relation to which the power in subsection (2)(a) may be exercised are—
 - (a) any premises occupied by the enforcement authority (but see subsection (4)),
 - (b) any laboratory (or similar premises) at which work related to the enforcement of any food legislation has been carried out for the enforcement authority,
 - (c) any other premises (other than a dwelling house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable.
- (4) Subsection (3)(a) does not apply where the enforcement authority is the Scottish Ministers.
- (5) An authorisation under subsection (1)—
 - (a) must be in writing,
 - (b) may include limitations or conditions (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation).
- (6) An authorised person must if so required—
 - (a) produce the authorisation before exercising a power mentioned in subsection (2),
 - (b) provide a document identifying any sample taken, or information copied, under any of those powers.
- (7) In this section, “authorised person” means a person authorised under subsection (1).

29 Offences in relation to section 28

- (1) Where subsection (2) applies, an authorised person commits an offence if the person makes use of or discloses to any other person any information obtained while on premises entered in exercise of the power in section 28(2)(a).
- (2) This subsection applies if—
 - (a) the information relates to a trade secret, and

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- (b) the information is used or the disclosure is made other than in performance of the authorised person's duty.
- (3) A person commits an offence if the person—
 - (a) intentionally obstructs an authorised person in exercising a power in section 28(2)(a), (b) or (c),
 - (b) fails without reasonable excuse to comply with any requirement imposed under section 28(2)(d), or
 - (c) in purported compliance with a requirement imposed under section 28(2)(d)—
 - (i) provides information which the person knows to be false or misleading in a material way, or
 - (ii) recklessly provides information which is false or misleading in a material way.
- (4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) In this section, “authorised person” means a person authorised under section 28(1).