



# Food (Scotland) Act 2015

## 2015 asp 1

### PART 3

#### ADMINISTRATIVE SANCTIONS

##### *General*

#### **49 Power to make supplementary etc. provision**

- (1) The Scottish Ministers may by regulations make such supplementary, incidental or consequential provision as they consider appropriate in connection with fixed penalty notices and compliance notices and the carrying out by enforcement authorities and their authorised officers of functions under this Part.
- (2) Regulations under subsection (1) may, in particular, include provision—
  - (a) facilitating, prohibiting or restricting—
    - (i) the issuing of a fixed penalty notice or compliance notice in respect of a relevant offence arising out of an act or omission in cases where another sanction has been issued or imposed in respect of the same act or omission,
    - (ii) the issuing or imposing of another sanction in respect of an act or omission in cases where a fixed penalty notice or compliance notice has been issued in respect of a relevant offence arising out of the same act or omission,
  - (b) for early payment discounts in relation to fixed penalty notices,
  - (c) applying with modifications, or making provision equivalent to, any of the following provisions of the 1990 Act—
    - (i) section 20 (offences due to fault of another person),
    - (ii) section 21 (defence of due diligence),
    - (iii) section 30(8) (documentary evidence in proceedings for offences),
    - (iv) section 32 (powers of entry),
    - (v) section 33 (obstruction etc. of officers),
    - (vi) section 34 (time limit for prosecutions),
    - (vii) section 36 (offences by bodies corporate),

---

*Status: This is the original version (as it was originally enacted).*

---

- (viii) section 36A (offences by partnerships),
  - (ix) section 40 (power to issue codes of practice),
  - (x) section 45 (regulations as to charges),
  - (xi) section 49(3) to (5) (authentication of documents),
  - (xii) section 50 (service of documents).
- (3) Regulations under subsection (1) containing provision referred to in subsection (2) (a) may also make such modifications of sections 38 and 45 as the Scottish Ministers consider necessary or expedient in relation to the case mentioned in subsection (4).
- (4) That case is where, in consequence of the provision, a person has been issued with both a fixed penalty notice and a compliance notice in relation to the same relevant offence arising out of the same act or omission.
- (5) But the provision which may be made by virtue of subsection (3) does not include provision which has the effect that the person may still be convicted of the offence if the person both—
- (a) makes payment in accordance with the fixed penalty notice, and
  - (b) complies with the requirements of the compliance notice or though failing to comply, does not, by virtue of subsection (2) of section 44, commit an offence under subsection (1) of that section in relation to the notice.
- (6) In subsection (2)(a), “another sanction” means—
- (a) a fixed penalty notice (in relation to a compliance notice),
  - (b) a compliance notice (in relation to fixed penalty notice),
  - (c) an improvement notice under section 10 of the 1990 Act,
  - (d) an emergency prohibition notice or an emergency prohibition order under section 12 of the 1990 Act, and
  - (e) an emergency control order under section 13 of the 1990 Act.
- (7) The Scottish Ministers may by regulations modify subsection (6).

## **50 Regulations**

- (1) Before making any regulations under this Part, the Scottish Ministers must—
- (a) have regard to any relevant advice given by Food Standards Scotland, and
  - (b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the regulations.
- (2) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (1)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.
- (3) Subsection (1)(b) does not apply in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.

## **51 Lord Advocate’s guidance**

- (1) The Lord Advocate may issue guidance to enforcement authorities about the exercise by them, and their authorised officers, of functions under this Part in relation to fixed penalty notices and compliance notices.

- (2) The Lord Advocate must publish any such guidance (in such manner as the Lord Advocate considers appropriate).
- (3) Subsection (2) does not apply to the extent that the Lord Advocate considers that publication would, or would be likely to, prejudice—
  - (a) the effective exercise of the functions of enforcement authorities, or their authorised officers, under this Part,
  - (b) the prevention or detection of crime,
  - (c) the apprehension or prosecution of offenders, or
  - (d) the administration of justice.
- (4) Enforcement authorities must comply, and ensure that their authorised officers comply, with such guidance in exercising those functions.
- (5) The power in subsection (1) includes power to issue revised guidance (and references in this section to guidance are to be construed accordingly).

## **52 Interpretation of Part**

In this Part—

- “appropriate enforcement authority”, in relation to a relevant offence, means the enforcement authority for the particular enactment under which the offence arises,
- “authorised officer”, in relation to an enforcement authority, means a person (whether or not an officer of the authority) who is authorised by the authority in writing, either generally or specifically, for the purposes of this Part,
- “compliance notice” has the meaning given in section 42(2),
- “compliance period”, in relation to a compliance notice, means the period stated in the notice in accordance with section 43(1)(d),
- “fixed penalty notice” has the meaning given in section 36(2),
- “payment period”, in relation to a fixed penalty notice, means the period stated in the notice in accordance with section 37(1)(e),
- “relevant offence” means a specified offence under food legislation,
- “specified” means specified in regulations made by the Scottish Ministers.