

---

STATUTORY INSTRUMENTS

---

**1989 No. 846**

**The Food (Northern Ireland) Order 1989**

**PART II**

**GENERAL PROVISIONS AS TO FOOD**

*Composition and labelling of food*

**Offences as to preparation and sale of injurious foods**

3.—(1) A person who—

- (a) adds any substance to food,
- (b) uses any substance as an ingredient in the preparation of food,
- (c) abstracts any constituent from food, or
- (d) subjects food to any other process or treatment,

so as (in any such case) to render the food injurious to health, with intent that the food shall be sold for human consumption in that state, shall be guilty of an offence.

(2) A person who—

- (a) sells for human consumption, or
- (b) offers, exposes or advertises for sale for human consumption or has in his possession for the purpose of sale for human consumption,

any food rendered injurious to health by means of any operation described in paragraph (1) shall, subject to paragraphs (3) and (4), be guilty of an offence.

(3) In any prosecution under this Article for an offence consisting of the advertisement for sale of any food, it shall be a defence for the person charged to prove that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement for publication in the ordinary course of business, and did not himself make, or cause to be made, any material alteration in the substance of that advertisement.

(4) In determining for the purposes of this Order whether an article of food is injurious to health, regard shall be had not only to the probable effect of that article on the health of a person consuming it, but also to the probable cumulative effect of articles of substantially the same composition on the health of a person consuming such articles in ordinary quantities.

**General protection for purchasers of food**

4.—(1) A person who sells to the prejudice of the purchaser any food which is not—

- (a) of the nature, or
- (b) of the substance, or
- (c) of the quality,

of the food demanded by the purchaser, shall, subject to Article 5, be guilty of an offence.

(2) In paragraph (1) the reference to sale shall be construed as a reference to sale for human consumption; and in any prosecution under that paragraph it shall not be a defence to allege that the purchaser was not prejudiced because he bought for analysis or examination.

#### **Defences available in proceedings under Article 4**

5.—(1) In any prosecution under Article 4 for an offence consisting of the sale of food—

- (a) to which any substance has been added, or
- (b) in the preparation of which any substance has been used as an ingredient, or
- (c) from which any constituent has been abstracted, or
- (d) which has been subjected to any other process or treatment,

other than food thereby rendered injurious to health, it shall be a defence to prove—

- (i) that the operation in question was not carried out fraudulently; and
- (ii) that the article was sold with a notice attached to it of adequate size, distinctly and legibly printed and conspicuously visible, stating explicitly the nature of the operation, or was sold in a wrapper or container displaying such a notice.

(2) In any prosecution under Article 4 for an offence alleged to have been committed by the sale of an article containing extraneous matter, it shall be a defence for the person charged to prove that the presence of that matter was an unavoidable consequence of the process of collection or preparation.

(3) In any prosecution under Article 4 for an offence alleged to have been committed by the sale of diluted spirit, being whisky, brandy, rum or gin, it shall be a defence for the person charged to prove—

- (a) that the spirit in question was diluted with water only; and
- (b) that its alcoholic strength by volume was not lower than 37.2 per cent.

#### **Regulations as to composition of food, etc.**

6.—(1) Subject to paragraph (4), the Department may, so far as it appears to the Department to be necessary or expedient in the interests of the public health or otherwise for the protection of the public or to be called for by any Community obligation, make regulations for any of the following purposes—

- (a) for requiring, prohibiting or regulating the addition of any specified substance, or any substance of any specified class, to food intended for sale for human consumption or any class of such food, or the use of any such substance as an ingredient in the preparation of such food, and generally for regulating the composition of such food;
- (b) for requiring, prohibiting or regulating the use of any process or treatment in the preparation of any food intended for sale for human consumption, or any class of such food;
- (c) for prohibiting or regulating the sale, possession for sale, offer or exposure for sale, consignment or delivery of food which does not comply with any of the regulations, or in relation to which an offence under the regulations has been committed or would have been committed if any relevant act or omission had taken place in Northern Ireland;
- (d) for prohibiting or regulating the sale, possession for sale, or offer, exposure or advertisement for sale, of any specified substance, or of any substance of any specified class, with a view to its use in the preparation of food for human consumption, and the possession of any such substance for use in the preparation of food intended for sale for human consumption.

(2) In the exercise of the functions conferred by this Article the Department shall have regard to the desirability of restricting, so far as practicable, the use of substances of no nutritional value as foods or as ingredients of foods.

(3) Regulations made under this Article may apply to cream and separated milk, and to any food containing milk, but otherwise shall not apply to milk.

(4) Regulations under this Article which apply to cream or ice-cream shall be made by the Department with the concurrence of the Department of Agriculture.

(5) Regulations made under this Article may provide that, where any food is certified by a public analyst as being food to which the regulations apply so far as they are made under paragraph (1)(c), that food may be treated for the purposes of Article 11 as being unfit for human consumption.

(6) Nothing in any regulations made under this Article shall be taken as prejudicing the generality of the powers conferred by Article 11.

### **Power of Department to obtain particulars of ingredients**

7.—(1) For the purpose of enabling the Department to exercise the functions conferred by Article 6, the Department may by order require every person who, at the date of the order or at any subsequent time, carries on a business which includes the production or use of substances of any class specified in the order to furnish to the Department, within such time as may be so specified, such particulars as may be so specified of the composition and use of any such substance sold in the course of that business for use in the preparation of food for human consumption or used for that purpose in the course of that business.

(2) Without prejudice to the generality of paragraph (1), an order made under that paragraph may require the following particulars to be furnished in respect of any substance—

- (a) particulars of the composition and chemical formula of the substance;
- (b) particulars of the manner in which the substance is used or proposed to be used in the preparation of food;
- (c) particulars of any investigations or inquiries carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance, or any product formed when the substance is used as mentioned above, is injurious to, or in any other way affects, health;
- (d) particulars of any investigations or inquiries carried out by or to the knowledge of the person carrying on the business in question for the purpose of determining the cumulative effect on the health of a person consuming such substance in ordinary quantities.

(3) Particulars furnished in accordance with an order under this Article, or information relating to any individual business obtained by means of such particulars, shall not, without the previous consent in writing of the person carrying on the business in question, be disclosed except—

- (a) in accordance with directions of the Department, so far as may be necessary for the purposes of Article 6 or of any corresponding enactment for the time being in force in England and Wales or Scotland; or
- (b) for the purposes of any prosecution for an offence under the order or of any report of such prosecution;

and no such disclosure shall be regarded as publication of the information.

(4) A person who discloses any particulars or information in contravention of paragraph (3) shall be guilty of an offence.

(5) An order made under this Article shall be subject to negative resolution.

### **Labels and advertisements describing food incorrectly**

8.—(1) A person who gives with any food sold by him, or displays with any food exposed by him for sale, a label, whether attached to or printed on the wrapper or container or not, which—

- (a) falsely describes that food; or
- (b) is calculated to mislead as to its nature, substance or quality;

shall be guilty of an offence, unless he proves that he did not know, and could not with reasonable diligence have ascertained, that the label was of such a character as mentioned above.

(2) Subject to paragraph (4), a person who publishes, or is a party to the publication of, an advertisement (not being such a label so given or displayed by him as described in paragraph (1)) which—

- (a) falsely describes any food; or
- (b) is calculated to mislead as to its nature, substance or quality;

shall be guilty of an offence; and in any prosecution under this paragraph against the manufacturer or producer of the food, it shall rest on the accused to prove that he did not publish, and was not a party to the publication of, the advertisement.

(3) For the purposes of this Article, a label or advertisement which is calculated to mislead as to the nutritional or dietary value of any food is calculated to mislead as to the quality of the food.

(4) In any prosecution under paragraph (2) it shall be a defence for the accused to prove either—

- (a) that he did not know, and could not with reasonable diligence have ascertained, that the advertisement was of such a character as is described in that paragraph; or
- (b) that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement for publication in the ordinary course of business and did not himself make, or cause to be made, any material alteration in the substance of that advertisement.

(5) In any prosecution for an offence under this Article the fact that a label or advertisement in respect of which the offence is alleged to have been committed contained an accurate statement of the composition of the food shall not preclude the court from finding that the offence was committed.

(6) In this Article references to sale shall be construed as references to sale for human consumption.

### **Regulations as to labelling and description of food**

9.—(1) Without prejudice to the provisions of Article 8 the Department may, subject to paragraph (4), make regulations for imposing requirements as to, and otherwise regulating—

- (a) the labelling, marking or advertising of food intended for sale for human consumption, and
- (b) the descriptions which may be applied to such food.

(2) Regulations made under this Article—

- (a) shall not make provision in relation to the labelling and marking of food in respect to weight, measure and number;
- (b) may make provision for any purpose authorised by Article 6(1)(c) in the case of regulations under that Article.

(3) Regulations made under this Article may apply to cream and separated milk, and to any food containing milk, but shall not otherwise apply to milk.

(4) Regulations under this Article which apply to cream or ice-cream shall be made by the Department with the concurrence of the Department of Agriculture.