

SCHEDULES

SCHEDULE 1

Article 28.

DISEASES OF COWS TO WHICH ARTICLE 28 APPLIES

Acute mastitis
Actinomycosis of the udder
Suppuration of the udder
Any infection of the udder or teats which is likely to convey disease
Any comatose condition
Any septic condition of the uterus
Anthrax
Foot-and-mouth disease

SCHEDULE 2

Article 64.

ENFORCEMENT AND EXECUTION OF ORDERS AND REGULATIONS MADE UNDER THE FOOD ACT 1984

1.—(1) In this Schedule—

“the Act of 1984” means the Food Act 1984⁽¹⁾;

“the Minister” means the Minister of Agriculture, Fisheries and Food;

“order” and “regulations” mean, respectively, an order or regulations made under the Act of 1984 and applying to Northern Ireland;

“ship” includes any boat or craft.

(2) In any provision of this Order applied for the purpose of the enforcement and execution of any order or regulation the expression “sampling officer” shall include an officer authorised in that behalf by the Minister.

2. It shall be the duty of the Minister to enforce and execute the provisions of any order.

3. For the purpose of ascertaining whether there is or has been any contravention of the provisions of any order or regulations an inspector of the Minister shall have the like powers of entry as are exercisable under Article 47 and Article 48 by an authorised officer of a district council; and in relation to any such inspector the reference in Article 47(3) to the council shall be construed as a reference to the Minister.

4.—(1) Without prejudice to the application of subsections (2) and (3) of section 20 of the Interpretation Act (Northern Ireland) 1954⁽²⁾ (which relate to offences committed by bodies corporate), in relation to offences under this Order or any regulations, order or byelaw made under

(1) 1984 c. 30

(2) 1954 c. 33 (N.I.)

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it, subsection (2) shall, with the omission of the words “subject to subsection (3)”, apply in relation to offences committed by bodies corporate against any provision of any order or regulations.

(2) In the application by sub-paragraph (1) of the said subsection (2) the expression “director”, in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

5.—(1) The Minister may, where he is of opinion that the general interests of consumers are affected, institute proceedings for an offence against any provision of regulations made under section 4 or section 7 of the Act of 1984, other than any such provision which it is the duty of a district council to enforce and execute.

(2) A district council shall not, except so far as may be otherwise prescribed by regulations made under section 7 of the Act of 1984, institute proceedings for an offence against any provision of those regulations unless it has given to the Minister fourteen days' notice of its intention to institute the proceedings, together with a summary of the facts on which the charge is founded.

(3) A certificate of the Minister that the requirements of sub-paragraph (2) have been complied with in relation to any proceedings shall be conclusive evidence that they have been so complied with; and any document purporting to be such a certificate and to be signed by or on behalf of the Minister shall be deemed to be such a certificate until the contrary is shown.

6.—(1) A person against whom proceedings are brought in respect of a contravention of any order or regulation shall, upon complaint duly made by him, and on giving not less than three clear days' notice of his intention, be entitled to have brought before the court in the proceedings any person to whose act or default he alleges that the contravention of the provisions in question was due, and the following provisions of this paragraph shall have effect accordingly.

(2) Where, in accordance with sub-paragraph (1), another person has been brought before the court and—

- (a) the contravention of the provisions in question has been proved; and
- (b) the original defendant proves that the contravention was due to the act or default of that other person;

that other person may be convicted of the offence.

(3) Where—

- (a) another person brought before the court in accordance with sub-paragraph (1) has been convicted of the offence in accordance with sub-paragraph (2); and
- (b) the original defendant proves that he used all due diligence to secure that the provisions in question were complied with;

the original defendant shall be acquitted of the offence.

(4) Where a defendant seeks to avail himself of the foregoing provisions of this paragraph—

- (a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence;
- (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to the proceedings.

(5) Where it appears to the Minister or, as the case may be, a district council that an offence against any provision of an order or regulation has been committed in respect of which proceedings might be taken against some person, and the Minister or the council is reasonably satisfied that—

- (a) the offence was due to an act or default of some other person; and

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(b) the first-mentioned person could establish a defence in accordance with the foregoing provisions of this paragraph;

the Minister or the council may cause proceedings to be taken against that other person without first causing proceedings to be taken against the first-mentioned person, and in any such proceedings that other person may be charged with, and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged.

7. The provisions of this Order which are specified in the first column of the following Table shall, subject to the modifications specified in the second column of that Table, apply for the purposes of the enforcement and execution of any order or regulation.

TABLE

| <i>Provision of this Order</i> | <i>Modification</i> |
|--------------------------------|--|
| Article 38: Paragraph (3) | <p>In sub-paragraph (c), after the word “vehicle” there shall be inserted the words “, ship, aircraft”, and for the words “this Order” there shall be substituted the words “the Food Act 1984”.</p> <p>After paragraph (3) there shall be inserted the following paragraph—</p> <p>“(3A) Without prejudice to paragraph (3) a sampling officer—</p> <ul style="list-style-type: none">(a) may take a sample of milk while at any dairy, or while deposited for collection, or at any time before it is delivered to a consumer in pursuance of a sale by retail;(b) may, at the request of a person to whom any food or substance is, or is to be, delivered in pursuance of a contract of sale, take a sample of that food or substance in the course of delivery, or at the place of delivery.”. |
| Paragraph (4) | <p>For paragraph (4) there shall be substituted the following paragraph—</p> <p>“(4) Except as provided by paragraph (3A), or with the consent of the purchaser, a sampling officer shall not take a sample of any food or substance which appears to him to have been sold by retail, either while the food or substance is in the course of delivery to the purchaser, or at any time after such delivery; and nothing in this Article shall authorise a sampling officer to take a sample of any food or substance in a ship (not being a home-going ship within the meaning of the Food Act 1984) or in any aircraft, other than food imported as part of the cargo of that ship or aircraft.”.</p> |

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| <i>Provision of this Order</i> | <i>Modification</i> |
|--------------------------------|---|
| Article 40 | Paragraph (7) shall be omitted. |
| Article 44 | |
| Article 47: Paragraph (1) | For the words “this Order”, wherever those words occur, there shall be substituted the words “the Food Act 1984”. |
| Paragraphs (2) to (7) | |
| Article 48: Paragraph (1) | After paragraph (1) there shall be inserted the following paragraph— “(1A) An authorised officer of a district council shall, on producing if so required, some duly authenticated document showing his authority, have a right at all reasonable hours to enter any ship or aircraft for the purpose of ascertaining whether there is in the ship or aircraft any food imported as part of the cargo in contravention of the provisions of regulations made under Part I of the Food Act 1984, and applying to Northern Ireland, being provisions which the district council is required or empowered to enforce.”. |
| Paragraph (2) | For paragraph (2) there shall be substituted the following paragraph— “(2) Paragraphs (3) to (5) of Article 47 shall apply in relation to any ship, aircraft, vehicle, stall or place which may be entered under the powers conferred by paragraphs (1) and (1A) of this Article, and as if any reference to the occupier of premises were a reference to the master, commander or other person in charge of the ship, aircraft, vehicle, stall or place.”. |

SCHEDULE 3

Article 76(1).

CONSEQUENTIAL AMENDMENTS

The Towns Improvement Clauses Act 1847 (c. 34)

1. In section 128, in the paragraph added by Part I of the Second Schedule to the Slaughter-houses Act (Northern Ireland) 1953, for “except in so far as they relate to the licensing and registering of knackers' yards” there shall continue to be substituted “so far as they relate to the prevention of cruelty in knackers' yards”, notwithstanding the repeal of section 71(1) of the Food and Drugs Act (Northern Ireland) 1958.

The Interpretation Act (Northern Ireland) 1954 (c. 33)

2. In section 43(2), in the definition of “public analyst”, for “Sale of Food and Drugs Acts (Northern Ireland), 1875 to 1939” substitute “Food (Northern Ireland) Order 1989”.

The Marketing of Milk Products Act (Northern Ireland) 1958 (c. 31)

3. In section 7—

(a) in subsection (3) for “and Drugs Act (Northern Ireland) 1958” substitute “(Northern Ireland) Order 1989”;

(b) for subsection (5) substitute the following subsection—

“(5) Article 58 of the Food (Northern Ireland) Order 1989 (pleading of warranty as defence) shall have effect in relation to a prosecution for an offence committed by reason of a contravention of sub-section (2), and Article 59 of that Order (offences in relation to warranties) shall have effect in relation to any warranty which, by virtue of this subsection, is or might be pleaded as a defence in any prosecution under sub-sections (2) and (4), as they have effect in relation to prosecutions or warranties under that Order, as if—

(a) subject to paragraph (b), any reference in those Articles to that Order were a reference to sub-sections (2) and (4);

(b) the references in Article 59(1) and (2) to an offence under that Order were references to an offence against this Act;

(c) in Article 58(1), for “, exposing or advertising” there were substituted “or exposing” and after “for the purpose of sale” there were inserted “or delivery”;

(d) paragraph (2)(c) of Article 58 were omitted.”.

4. In section 15(1A), for “section 22(2A) of the Food and Drugs Act (Northern Ireland) 1958” substitute “Article 29(3) of the Food (Northern Ireland) Order 1989”.

The Agricultural Produce (Meat Regulation and Pig Industry) Act (Northern Ireland) 1962 (c. 13)

5. In section 19, for “and Drugs Act (Northern Ireland) 1958” substitute “(Northern Ireland) Order 1989”.

6. In section 20(2), for “and Drugs Act (Northern Ireland) 1958” substitute “(Northern Ireland) Order 1989”.

The Horticulture Act (Northern Ireland) 1966 (c. 15)

7. In section 33(3), for “and Drugs Act (Northern Ireland) 1958” substitute “(Northern Ireland) Order 1989”.

8. In section 36(b), for “and Drugs Act (Northern Ireland) 1958” substitute “(Northern Ireland) Order 1989”.

The Trade Descriptions Act 1968 (c. 29)

9. In section 2(5), for “and Drugs Act (Northern Ireland) 1958” substitute “(Northern Ireland) Order 1989”.

10. In section 22(2)—

(a) for “and Drugs Act (Northern Ireland) 1958” substitute “(Northern Ireland) Order 1989”;

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- (b) in paragraph (c), for “Act of 1958, sections 35 and 38” substitute “Order of 1989, Articles 40 and 44”;
- (c) for “section 68 or 68A of the said Act of 1958” substitute “Article 72 or 73 of the said Order of 1989”.

The Medicines Act 1968 (c. 67)

11. In Schedule 3, in paragraph 1(2), for “section 31 of the Food and Drugs Act (Northern Ireland) 1958” substitute “Article 36 of the Food (Northern Ireland) Order 1989”.

The Weights and Measures &c. Act 1976 (c. 77)

12. In section 12—

- (a) in subsection (1), for paragraph (c) substitute the following paragraph—
 - “(c) Article 6 or 9 of the Food (Northern Ireland) Order 1989 (the “1988 Order”);
or”;
- (b) in subsection (5)(a), for “or Order” and “or that Order” substitute respectively “or Orders” and “or those Orders”;
- (c) in subsection (9)(b), for “1958 Act” substitute “1989 Order”.

13. In Schedule 6, for paragraph 4 substitute the following paragraph—

“Food (Northern Ireland) Order 1989 (NI 6)

4.—(1) This paragraph applies where the relevant requirement took effect under or by virtue of the Food (Northern Ireland) Order 1989.

(2) The following provisions of that Order—

- (a) Part III (administration and enforcement),
- (b) Part IV (procedure and evidence), and
- (c) Articles 67, 68 and 74 (default powers and other supplemental provisions),

shall apply as if the substituted requirement were imposed by regulations under Article 6 or 9.”.

The Poisons (Northern Ireland) Order 1976 (NI 23)

14. In Article 2(2), in the definition of “public analyst”, for “and Drugs Act (Northern Ireland) 1958” substitute “(Northern Ireland) Order 1989”.

The Hydrocarbon Oil Duties Act 1979 (c. 5)

15. In Schedule 5, in paragraph 5(d), for “section 31 of the Food and Drugs Act (Northern Ireland) 1958” substitute “Article 36 of the Food (Northern Ireland) Order 1989”.

The Weights and Measures (Northern Ireland) Order 1981 (NI 10)

16. In Article 2(2), in the definition of “drugs” and “food”, for “and Drugs Act (Northern Ireland) 1958” substitute “(Northern Ireland) Order 1989”.

The Milk (Northern Ireland) Order 1983 (NI 2)

17. In Article 5(3)(b), for “and Drugs Act (Northern Ireland) 1958” substitute “(Northern Ireland) Order 1989”.

18. In Article 9(2), for “section 22(2A) of the Food and Drugs Act (Northern Ireland) 1958” substitute “Article 29(3) of the Food (Northern Ireland) Order 1989”.

19. In Article 10, for paragraph (3) substitute the following paragraph—

“(3) A warranty or invoice shall be available as a defence in a prosecution for an offence under this Order in any case where a warranty or invoice would be so available if the prosecution had been taken under the Food (Northern Ireland) Order 1989 in respect of the sale of an article of food, and Articles 58 (omitting paragraph (2)(c)) and 59 (omitting paragraph (1)) shall apply accordingly.”.

The Food and Environment Protection Act 1985 (c. 48)

20. In section 24(1), in the definition of “food”, for “section 70 of the Food and Drugs Act (Northern Ireland) 1958” substitute “Article 2(2) of the Food (Northern Ireland) Order 1989”.

The Criminal Justice (Northern Ireland) Order 1986 (NI 15)

21. In Article 11(2), for “that Act of 1958” substitute “the Food and Drugs Act (Northern Ireland) 1958”.

The Health and Personal Social Services (Amendment)(Northern Ireland) Order 1986 (NI 20)

22. In Article 2(2), in the definition of “the food legislation”, for paragraphs (a) to (c) substitute—

- “(a) the Food (Northern Ireland) Order 1989; and
- (b) any regulations or order made under that Order;”.

The Consumer Protection Act 1987 (c. 43)

23. In section 19(1), in the definition of “food”, for “and Drugs Act (Northern Ireland) 1958” substitute “(Northern Ireland) Order 1989”.

SCHEDULE 4

Article 76(2).

REPEALS AND REVOCATIONS

| Chapter or Number | Title | Extent of repeal or revocation |
|--------------------|--|---------------------------------|
| Repeals | | |
| 1958 c. 27 (N.I.). | The Food and Drugs Act (Northern Ireland) 1958. | The whole Act. |
| 1962 c. 7 (N.I.). | The Administrative and Financial Provisions Act (Northern Ireland) 1962. | Sections 5 and 6. The Schedule. |
| 1967 c. 15 (N.I.). | The Agriculture (Miscellaneous Provisions) Act (Northern Ireland) 1967. | Section 12. |

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| Chapter or Number | Title | Extent of repeal or revocation |
|--------------------------------|--|--|
| 1972 NI 14. | The Health and Personal Social Services (Northern Ireland) Order 1972. | In Schedule 16, paragraph 22. |
| 1979 NI 17. | The Control of Food Premises (Northern Ireland) Order 1979. | The whole Order. |
| 1981 NI 22. | The Diseases of Animals (Northern Ireland) Order 1981. | In Schedule 5, paragraph 4. |
| 1983 NI 2. | The Milk (Northern Ireland) Order 1983. | In Schedule 1, paragraphs 1 and 3. |
| 1985 NI 15. | The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1985. | In Article 37, paragraph (a). In Schedule 3, paragraphs 11 to 14. |
| 1986 NI 15. | The Criminal Justice (Northern Ireland) Order 1986. | In Article 11, paragraph (1). Schedule 4. |
| Revocations | | |
| S.R. & O. (N.I.) 1972 No. 363. | The European Communities (Food and Drugs) Order (Northern Ireland) 1972. | The whole order. |
| S.R. & O. (N.I.) 1973 No. 211. | The Local Government (Modifications and Repeals of Health etc. Legislation) Order (Northern Ireland) 1973. | In the Schedule, the entries relating to the Food and Drugs Act (Northern Ireland) 1958 and the Administrative and Financial Provisions Act (Northern Ireland) 1962. |
| S.R. 1975 No. 373. | The European Communities (Food and Drugs) Order (Northern Ireland) 1975. | The whole order. |