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STATUTORY INSTRUMENTS

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**1991 No. 762**

**The Food Safety (Northern Ireland) Order 1991**

**PART II**

**GENERAL PROVISIONS AS TO FOOD**

**Interpretation**

*Para. (1) rep. by SR 2004 No. 505*

[<sup>F1</sup>(2) For the purposes of this Part food fails to comply with food safety requirements if it is unsafe within the meaning of Article 14 of Regulation (EC) No. 178/2002 and references to food safety requirements or to food complying with such requirements shall be construed accordingly.

(3) In determining for the purposes of paragraph (2) and Article 6 whether any food is injurious to health, regard shall be had to the matters specified in sub-paragraphs (a) to (c) of Article 14(4) of Regulation 178/2002.]

*Para. (3) rep. by SR 2004 No. 505*

(4) For the purposes of this Part, subject to paragraph (5), any part of, or product derived wholly or partly from, an animal which has been slaughtered otherwise than in a slaughterhouse, shall be deemed to be unfit for human consumption.

(5) In paragraph (4), “animal” has the same meaning as in the Slaughter of Animals Act (Northern Ireland) 1932<sup>F2</sup> and that paragraph shall not apply where accident, illness or emergency affecting the animal in question required it to be slaughtered as mentioned in that paragraph.

**F1** SR 2004/505

**F2** 1932 c. 9 (NI)

*Food safety*

**Rendering food injurious to health**

6.—[<sup>F3</sup>(1)] Any person who renders any food injurious to health by means of any of the following operations, namely—

- (a) adding any article or substance to the food;
- (b) using any article or substance as an ingredient in the preparation of the food;
- (c) abstracting any constituent from the food; and
- (d) subjecting the food to any other process or treatment,

with intent that it shall be sold for human consumption, shall be guilty of an offence.

*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Food Safety (Northern Ireland) Order 1991, PART II. (See end of Document for details)*

[<sup>F3</sup>(2) In determining for the purposes of this Article whether any food is injurious to health regard shall be had to the matters specified in sub-paragraph (a) to (c) of Article 14(4) of Regulation (EC) No. 178/2002.]

<b>F3</b> SR 2004/505
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*Art. 7 rep. by SR 2004/505*

### **Inspection and seizure of suspected food**

<sup>F4F5</sup>8.—(1) An authorised officer may at all reasonable times inspect any food intended for human consumption which—

- (a) has been sold or is offered or exposed for sale;<sup>F6</sup> . . .
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale; [<sup>F6</sup> or]

[<sup>F6</sup>(c) is otherwise placed on the market for the purposes of Regulation (EC) No. 178/2002.]

and paragraphs (3) to (9) shall apply where, on such an inspection, it appears to the authorised officer that any food fails to comply with food safety requirements.

(2) The following provisions shall also apply where, otherwise than on such an inspection, it appears to an authorised officer that any food is likely to cause food poisoning or any disease communicable to human beings.

(3) The authorised officer may either—

- (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it—
  - (i) is not to be used for human consumption; and
  - (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or

(b) seize the food and remove it in order to have it dealt with by a justice of the peace;

and any person who knowingly contravenes the requirements of a notice under sub#paragraph (a) shall be guilty of an offence.

(4) Where the authorised officer gives notice under paragraph (3)(a), he shall, as soon as is reasonably practicable and in any event before the expiration of 21 days from the date of the notice, determine whether or not he is satisfied that the food complies with food safety requirements and—

- (a) if he is so satisfied, shall forthwith withdraw the notice;
- (b) if he is not so satisfied, shall seize the food and remove it in order to have it dealt with by a justice of the peace.

(5) Where an authorised officer seizes and removes food under paragraph (3)(b) or (4)(b), he shall inform the person in charge of the food of his intention to have it dealt with by a justice of the peace and—

- (a) any person who under Article 6 [<sup>F6</sup> or regulation 4(a) of the General Food Regulations (Northern Ireland) 2004] might be liable to a prosecution in respect of the food shall, if he attends before the justice of the peace by whom the food falls to be dealt with, be entitled to be heard and to call witnesses;<sup>F7</sup> . . .

*Sub#para. (b) rep. by 2003 NI 12*

(6) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any food falling to be dealt with by him under this Article fails to comply with food safety requirements, he shall condemn the food and order—

- (a) the food to be destroyed or to be so disposed of as to prevent it from being used for human consumption; and
- (b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the food.

(7) If a notice under paragraph (3)(a) is withdrawn, or the justice of the peace by whom any food falls to be dealt with under this Article refuses to condemn it, the district council or, as the case may be,<sup>F8</sup> the Food Standards Agency or] the Department of Agriculture shall compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under paragraph (7) shall be determined by a single arbitrator appointed, failing agreement between the parties, by the Head of<sup>F8</sup> the Department],<sup>F9</sup> . . .

(9) In this Article—

- (a) any reference to an authorised officer includes a reference to a director of public health of a Health and Social Services Board;
- (b) in paragraph (7) the reference to the district council or, as the case may be,<sup>F8</sup> the Food Standards Agency or] the Department of Agriculture includes, in relation to a director of public health of a Health and Social Services Board, the Health and Social Services Board;
- (c) “Health and Social Services Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>F10</sup>.

**F4** mod. by SR 1999/255; 261; 335; 336; 357; 360; 420; 422; 2000/72, 73; 2003/299

**F5** mod. by SR 2004/385

**F6** SR 2004/505

**F7** 2002 c. 26

**F8** 1999 c. 28

**F9** 1996 c. 23

**F10** 1972 NI 14

#### **Modifications etc. (not altering text)**

**C1** Art. 8 applied (with modifications) (1.7.2006) by Contaminants in Food Regulations (Northern Ireland) 2006 (S.R. 2006/256), **reg. 5(2)** (with reg. 5(3))

**C2** mod. by SR 2004/487

**C3** Art. 8 applied (with modifications) (1.3.2007) by Contaminants in Food Regulations (Northern Ireland) 2007 (S.R. 2007/66), **reg. 5(2)** (with reg. 5(3))

**C4** Art. 8 applied (with modifications) (1.7.2009) by Contaminants in Food Regulations (Northern Ireland) 2009 (S.R. 2009/220), **reg. 5(2)** (with reg. 5(3))

**C5** Art. 8 applied (with modifications) (31.7.2009) by Food Irradiation Regulations (Northern Ireland) 2009 (S.R. 2009/258), **reg. 11(2)**

**C6** Art. 8 applied (with modifications) (20.1.2010) by Food (Jelly Mini-Cups) (Emergency Control) Regulations (Northern Ireland) 2009 (S.R. 2009/417), **reg. 5(2)** (subject to reg. 5(3))

**Improvement notices**

**9.**—(1) If an authorised officer has reasonable grounds for believing that the proprietor of a food business is failing to comply with any regulations to which this Article applies, he may, by a notice served on that proprietor (an “improvement notice”)—

- (a) state the officer's grounds for believing that the proprietor is failing to comply with the regulations;
  - (b) specify the matters which constitute the proprietor's failure so to comply;
  - (c) specify the measures which, in the officer's opinion, the proprietor must take in order to secure compliance; and
  - (d) require the proprietor to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.
- (2) Any person who fails to comply with an improvement notice shall be guilty of an offence.
- (3) This Article and Article 10 apply to any regulations under this Part which make provision—
- (a) for requiring, prohibiting or regulating the use of any process or treatment in the preparation of food; or
  - (b) for securing the observance of hygienic conditions and practices in connection with the carrying out of commercial operations with respect to food or food sources.

**Prohibition orders**

**10.**—(1) If—

- (a) the proprietor of a food business is convicted of an offence under any regulations to which this Article applies; and
- (b) the court by or before which he is so convicted is satisfied that the health risk condition is fulfilled with respect to that business,

the court shall by an order impose the appropriate prohibition.

(2) The health risk condition is fulfilled with respect to any food business if any of the following involves risk of injury to health, namely—

- (a) the use for the purposes of the business of any process or treatment;
- (b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; and
- (c) the state or condition of any premises or equipment used for the purposes of the business.

[<sup>F11</sup>(2A) In paragraph (2) and in Articles 11(4) and 12(1) “injury” includes any impairment, whether permanent or temporary.]

(3) The appropriate prohibition is—

- (a) in a case falling within paragraph (2)(a), a prohibition on the use of the process or treatment for the purposes of the business;
- (b) in a case falling within paragraph (2)(b), a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description;<sup>60</sup>
- (c) in a case falling within paragraph (2)(c), a prohibition on the use of the premises or equipment for the purposes of any food business.

(4) If—

- (a) the proprietor of a food business is convicted of an offence under any regulations to which this Article applies by virtue of Article 9(3)(b); and

- (b) the court by or before which he is so convicted thinks it proper to do so in all the circumstances of the case,

the court may, by order, impose a prohibition on the proprietor participating in the management of any food business, or any food business of a class or description specified in the order.

(5) As soon as practicable after the making of an order under paragraph (1) or (4) (a “prohibition order”), the district council or, as the case may be,<sup>[F12]</sup> the Food Standards Agency or<sup>[F12]</sup> the Department of Agriculture shall—

- (a) serve a copy of the order on the proprietor of the business; and  
(b) in the case of an order under paragraph (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the business as it considers appropriate;

and any person who knowingly contravenes such an order shall be guilty of an offence.

(6) A prohibition order shall cease to have effect—

- (a) in the case of an order under paragraph (1), on the issue by the district council or, as the case may be,<sup>[F12]</sup> the Food Standards Agency or<sup>[F12]</sup> the Department of Agriculture of a certificate to the effect that it is satisfied that the proprietor has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the business;  
(b) in the case of an order under paragraph (4), on the giving by the court of a direction to that effect.

(7) The district council or, as the case may be,<sup>[F12]</sup> the Food Standards Agency or<sup>[F12]</sup> the Department of Agriculture shall issue a certificate under paragraph (6)(a) before the expiration of 3 days from being satisfied as mentioned in that sub#paragraph; and, on an application by the proprietor for such a certificate, shall—

- (a) determine, as soon as is reasonably practicable and in any event before the expiration of 14 days from the making of the application, whether or not it is so satisfied; and  
(b) if it determines that it is not so satisfied, give notice to the proprietor of the reasons for that determination.

(8) The court shall give a direction under paragraph (6)(b) if, on an application by the proprietor, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the proprietor since the making of the order; but no such application shall be entertained if it is made—

- (a) before the expiration of 6 months from the making of the prohibition order; or  
(b) before the expiration of 3 months from the making by the proprietor of a previous application for such a direction.

(9) Where a magistrates' court makes an order under Article 11 with respect to any food business, paragraph (1) of this Article shall apply as if the proprietor of the business had been convicted by the court of an offence under regulations to which this Article applies.

(10) Paragraph (4) shall apply in relation to a manager of a food business as it applies in relation to the proprietor of such a business; and any reference in paragraph (5) or (8) to the proprietor of the business, or to the proprietor, shall be construed accordingly.

(11) In paragraph (10) “manager”, in relation to a food business, means any person who is entrusted by the proprietor with the day to day running of the business, or any part of the business.

**F11** SR 2004/505

**F12** 1999 c. 28

**Emergency prohibition notices and orders**

11.—(1) If an authorised officer is satisfied that the health risk condition is fulfilled with respect to any food business, he may, by a notice served on the proprietor of the business (an “emergency prohibition notice”), impose the appropriate prohibition.

(2) If a magistrates' court is satisfied, on the application of such an officer, that the health risk condition is fulfilled with respect to any food business, the court shall, by order (an “emergency prohibition order”), impose the appropriate prohibition.

(3) An authorised officer shall not apply for an emergency prohibition order unless, at least one day before the date of the application, he has served notice on the proprietor of the business of his intention to apply for the order.

(4) Paragraphs (2) and (3) of Article 10 shall apply for the purposes of this Article as they apply for the purposes of that Article, but as if the reference in paragraph (2) to risk of injury to health were a reference to imminent risk of such injury.

(5) As soon as practicable after the service of an emergency prohibition notice, the district council or, as the case may be,<sup>[F13]</sup> the Food Standards Agency or] the Department of Agriculture shall affix a copy of the notice in a conspicuous position on such premises used for the purposes of the business as it considers appropriate; and any person who knowingly contravenes such a notice shall be guilty of an offence.

(6) As soon as practicable after the making of an emergency prohibition order, the district council or, as the case may be,<sup>[F13]</sup> the Food Standards Agency or] the Department of Agriculture shall—

- (a) serve a copy of the order on the proprietor of the business; and
- (b) affix a copy of the order in a conspicuous position on such premises used for the purposes of that business as it considers appropriate;

and any person who knowingly contravenes such an order shall be guilty of an offence.

(7) An emergency prohibition notice shall cease to have effect—

- (a) if no application for an emergency prohibition order is made before the expiration of the period of 3 days from the service of the notice, at the end of that period;
- (b) if such an application is so made, on the determination or abandonment of the application.

(8) An emergency prohibition notice or emergency prohibition order shall cease to have effect on the issue by the district council or, as the case may be,<sup>[F13]</sup> the Food Standards Agency or] the Department of Agriculture of a certificate to the effect that it is satisfied that the proprietor has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the business.

(9) The district council or, as the case may be,<sup>[F13]</sup> the Food Standards Agency or] the Department of Agriculture shall issue a certificate under paragraph (8) before the expiration of 3 days from being satisfied as mentioned in that paragraph; and, on an application by the proprietor for such a certificate, shall—

- (a) determine, as soon as is reasonably practicable and in any event before the expiration of 14 days from the making of the application, whether or not it is so satisfied; and
- (b) if it determines that it is not so satisfied, give notice to the proprietor of the reasons for that determination.

(10) Where an emergency prohibition notice is served on the proprietor of a business, the district council or, as the case may be,<sup>[F13]</sup> the Food Standards Agency or] the Department of Agriculture shall compensate him in respect of any loss suffered by reason of his complying with the notice unless—

- (a) an application for an emergency prohibition order is made before the expiration of 3 days from the service of the notice; and

(b) the court declares itself satisfied, on the hearing of the application, that the health risk condition was fulfilled with respect to the business at the time when the notice was served; and any disputed question as to the right to or the amount of any compensation payable under this paragraph shall be determined by a single arbitrator appointed, failing agreement between the parties, by the Head of [F13 the Department];<sup>F14</sup> . . .

F13 1999 c. 28

F14 1996 c. 23

### Emergency control orders

12.—(1) If it appears to [F15 the Department] that the carrying out of commercial operations with respect to food, food sources or contact materials of any class or description involves or may involve imminent risk of injury to health, [F15 the Department] may, by order (an “emergency control order”), prohibit the carrying out of such operations with respect to food, food sources or contact materials of that class or description.

(2) Any person who knowingly contravenes an emergency control order shall be guilty of an offence.

(3) [F15 The Department] [F15 or the Food Standards Agency] may consent, either unconditionally or subject to any condition that [F15 the authority giving the consent] considers appropriate, to the doing in a particular case of anything prohibited by an emergency control order.

(4) It shall be a defence for a person charged with an offence under paragraph (2) to show—

- (a) that consent had been given under paragraph (3) to the contravention of the emergency control order; and
- (b) that any condition subject to which that consent was given was complied with.

(5) [F15 The Department] [F15 or the Food Standards Agency]

- (a) may give such directions as appear to [F15 the authority giving the directions] to be necessary or expedient for the purpose of preventing the carrying out of commercial operations with respect to any food, food sources or contact materials which [F15 the authority giving the directions] believes, on reasonable grounds, to be food, food sources or contact materials to which an emergency control order applies; and
- (b) may do anything which appears to [F15 the authority giving the directions] to be necessary or expedient for that purpose.

(6) Any person who fails to comply with a direction under this Article shall be guilty of an offence.

(7) If [F15 the Department] [F15 or the Food Standards Agency] does anything by virtue of this Article in consequence of any person failing to comply with an emergency control order or a direction under this Article, [F15 that authority] may recover from that person any expenses reasonably incurred by [F15 that authority] under this Article.

Para. (8) rep. by 1996 NI 12

F15 1999 c. 28

### *Consumer protection*

#### **Selling food not of the nature or substance or quality demanded**

13.—(1) Any person who sells to the purchaser's prejudice any food which is not of the nature or substance or quality demanded by the purchaser shall 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 proceedings under that paragraph it shall not be a defence that the purchaser was not prejudiced because he bought for analysis or examination.

#### **Falsely describing or presenting food**

14.—(1) Any person who gives with any food sold by him, or displays with any food offered or exposed by him for sale or in his possession for the purpose of sale, a label, whether or not attached to or printed on the wrapper or container, which—

- (a) falsely describes the food; or
- (b) is likely to mislead as to the nature or substance or quality of the food,

shall be guilty of an offence.

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

- (a) falsely describes any food; or
- (b) is likely to mislead as to the nature or substance or quality of any food,

shall be guilty of an offence.

(3) Any person who sells, or offers or exposes for sale, or has in his possession for the purpose of sale, any food the presentation of which is likely to mislead as to the nature or substance or quality of the food shall be guilty of an offence.

(4) In proceedings for an offence under paragraph (1) or (2), 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.

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

### *Regulations*

#### **Food safety and consumer protection**

15.—(1) Regulations may make—

- (a) provision for requiring, prohibiting or regulating the presence in food or food sources of any specified substance, or any substance of any specified class, and generally for regulating the composition of food;
- (b) provision for securing that food is fit for human consumption and meets such microbiological standards (whether going to the fitness of the food or otherwise) as may be specified by or under the regulations;
- (c) provision for requiring, prohibiting or regulating the use of any process or treatment in the preparation of food;
- (d) provision for securing the observance of hygienic conditions and practices in connection with the carrying out of commercial operations with respect to food or food sources;



- (e) provision for imposing requirements or prohibitions as to, or otherwise regulating, the labelling, marking, presenting or advertising of food, and the descriptions which may be applied to food; and
  - (f) such other provision with respect to food or foodsources, including in particular provision for prohibiting or regulating the carrying out of commercial operations with respect to food or food sources, as appears to<sup>F16</sup> the Department] to be necessary or expedient—
    - (i) for the purpose of securing that food complies with food safety requirements or in the interests of the public health; or
    - (ii) for the purpose of protecting or promoting the interests of consumers.
- (2) Regulations may also make provision—
- (a) for securing the observance of hygienic conditions and practices in connection with the carrying out of commercial operations with respect to contact materials which are intended to come into contact with food intended for human consumption;
  - (b) for imposing requirements or prohibitions as to, or otherwise regulating, the labelling, marking or advertising of such materials, and the descriptions which may be applied to them; and
  - (c) otherwise for prohibiting or regulating the carrying out of commercial operations with respect to such materials.
- (3) Without prejudice to the generality of paragraph (1), regulations under that paragraph may make any such provision as is mentioned in Schedule 1.
- (4) In making regulations under paragraph (1),<sup>F16</sup> 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.
- (5) In paragraph (1) and Schedule 1—
- (a) references to food shall be construed as references to food intended for sale for human consumption; and
  - (b) references to food sources shall be construed as references to food sources from which such food is intended to be derived.

F16 1999 c. 28

### Enforcement of Community provisions

**16.**—(1) Regulations may make such provision with respect to food, food sources or contact materials, including in particular provision for prohibiting or regulating the carrying out of commercial operations with respect to food, food sources or contact materials, as appears to<sup>F17</sup> the Department] to be called for by any Community obligation.

(2) As respects any directly applicable Community provision which relates to food, food sources or contact materials and for which, in the opinion of<sup>F17</sup> the Department], it is appropriate to provide under this Order, regulations may—

- (a) make such provision as<sup>F17</sup> the Department] considers necessary or expedient for the purpose of securing that the Community provision is administered, executed and enforced under this Order; and
- (b) apply such of the provisions of this Order as may be specified in the regulations in relation to the Community provision with such modifications, if any, as may be so specified.

(3) In paragraphs (1) and (2) references to food or food sources shall be construed in accordance with Article 15(5).

F17 1999 c. 28

### Special provisions for particular foods, etc.

17.—(1) Regulations may make provision—

- (a) for prohibiting the carrying out of commercial operations with respect to novel foods or food sources from which such foods are intended to be derived of any class specified in the regulations;<sup>F18</sup> . . .
- (b) for prohibiting the carrying out of such operations with respect to genetically modified food sources, or foods derived from such food sources, of any class so specified;<sup>F18</sup> or]
- [<sup>F18</sup>(c) for prohibiting the importation of any food of a class so specified,]

and<sup>F18</sup> (in each case)] for excluding from the prohibition any food or food source which is of a description specified by or under the regulations<sup>F18</sup> and in the case of a prohibition on importation, is imported at an authorised place of entry].

(2) Regulations may also—

- (a) prescribe, in relation to milk of any description which complies with such requirements as may be prescribed, such designation as<sup>F19</sup> the Department] considers appropriate;
- (b) prohibit—
  - (i) all sales by retail; or
  - (ii) use, or possession for use, for the purposes of a business, of milk, unless the milk is of a description to which a designation has been prescribed under sub#paragraph (a) and complies with the requirements of milk of that designation;
- (c) make provision for—
  - (i) the issue of milk licences;
  - (ii) the authorisation of the sale of milk produced by the holder of a milk licence in any area where no milk of a description prescribed under sub#paragraph (a) is available; and
  - (iii) the imposition of conditions subject to which such a sale may be made.

[<sup>F18</sup>(2A) In this Article—

“authorised place of entry” means any port, aerodrome or other place of entry authorised by or under the regulations and, in relation to food in a particular consignment, includes any place of entry so authorised for the importation of that consignment;

“novel food” means any food which has not previously been used for human consumption in Northern Ireland, or has been so used to a very limited extent.]

(3) For the purposes of this Article a food source is genetically modified if any of the genes or other genetic material in the food source—

- (a) has been modified by means of an artificial technique; or
- (b) is inherited or otherwise derived through any number of replications, from genetic material which was so modified;

and in this paragraph “artificial technique” does not include any technique which involves no more than, or no more than the assistance of, naturally occurring processes of reproduction (including selective breeding techniques or in vitro fertilisation).

F18 1996 NI 12

F19 1999 c. 28

### Registration and licensing of food premises

18.—(1) Regulations may make provision—

- (a) for the registration by district councils<sup>[F20]</sup> or, as the case may be,<sup>[F21]</sup> the Food Standards Agency or] the Department of Agriculture] of premises used or proposed to be used for the purposes of a food business, and for prohibiting the use for those purposes of any premises which are not registered in accordance with the regulations; or
- (b) subject to paragraph (2), for the issue by district councils or, as the case may be, the Department of Agriculture of licences in respect of the use of premises for the purposes of a food business, and for prohibiting the use for those purposes of any premises except in accordance with a licence issued under the regulations.

(2) <sup>[F21]</sup>The Department] shall exercise the power conferred by paragraph (1)(b) only where it appears to<sup>[F21]</sup> the Department] to be necessary or expedient to do so—

- (a) for the purpose of securing that food complies with food safety requirements or in the interests of the public health; or
- (b) for the purpose of protecting or promoting the interests of consumers.

F20 1996 NI 12

F21 1999 c. 28

*Defences, etc.*

### Offences due to fault of another person

<sup>F22</sup>19. Where the commission by any person of an offence under any of the preceding provisions of this Part is due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this Article whether or not proceedings are taken against the first#mentioned person.

F22 mod. by SR 2005/284

#### Modifications etc. (not altering text)

- C7 Art. 19 applied (with modifications) (20.5.2006) by Ceramic Articles in Contact with [Food Regulations \(Northern Ireland\) 2006 \(S.R. 2006/217\)](#), [reg. 7\(a\)](#);  
Art. 19 applied (with modifications) (1.7.2006) by Contaminants in [Food Regulations \(Northern Ireland\) 2006 \(S.R. 2006/256\)](#), [reg. 5\(1\)\(b\)](#);  
Art. 19 applied (with modifications) (18.10.2006) by [Curd Cheese \(Restrictions on Placing on the Market\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/415\)](#), [reg. 4\(a\)](#);  
Art. 19 applied (with modifications) (9.11.2006) by [Rice Products \(Restriction on First Placing on the Market\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/443\)](#), [reg. 5\(a\)](#)
- C8 mod. by SR 2004/487

*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Food Safety (Northern Ireland) Order 1991, PART II. (See end of Document for details)*

- C9 Art. 19 applied (1.3.2007) by Notification of Marketing of Food for Particular Nutritional Uses Regulations (Northern Ireland) 2007 (S.R. 2007/60), **reg. 7(c)**
- C10 Art. 19 applied (with modifications) (1.3.2007) by Quick-frozen Foodstuffs Regulations (Northern Ireland) 2007 (S.R. 2007/65), **reg. 10(c)**
- C11 Art. 19 applied (with modifications) (1.3.2007) by Contaminants in Food Regulations (Northern Ireland) 2007 (S.R. 2007/66), **reg. 5(1)(b)**
- C12 Art. 19 applied (with modifications) (1.3.2007) by Quick-frozen Foodstuffs (No.2) Regulations (Northern Ireland) 2007 (S.R. 2007/110), **reg. 10(c)**
- C13 Art. 19 applied (with modifications) (7.8.2007) by Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007 (S.R. 2007/301), **reg. 5(c)**
- C14 Art. 19 applied (with modifications) (1.10.2007) by Nutrition and Health Claims Regulations (Northern Ireland) 2007 (S.R. 2007/349), **reg. 6(c)**
- C15 Art. 19 applied (with modifications) (3.8.2007) by Food (Suspension of the Use of E 128 Red 2G as Food Colour) Regulations (Northern Ireland) 2007 (S.R. 2007/352), **reg. 5(a)**
- C16 Art. 19 applied (31.10.2007) by Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2007 (S.R. 2007/420), **reg. 22(1)(c)** (with reg. 3)
- C17 Art. 19 applied (with modifications) (11.1.2008) by Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007 (S.R. 2007/506), **reg. 29(b)**
- C18 Art. 19 applied (with modifications) (12.3.2008) by Rice Products from the United States of America (Restriction on First Placing on the Market) Regulations (Northern Ireland) 2008 (S.R. 2008/99), **reg. 5(a)**
- C19 Art. 19 applied (with modifications) (14.4.2008) by Eggs and Chicks Regulations (Northern Ireland) 2008 (S.R. 2008/98), **reg. 20**
- C20 Art. 19 applied (with modifications) (15.4.2008) by Specified Products from China (Restriction on First Placing on the Market) Regulations (Northern Ireland) 2008 (S.R. 2008/171), **reg. 6(a)**
- C21 Art. 19 applied (with modifications) (1.7.2008) by Drinking Milk Regulations (Northern Ireland) 2008 (S.R. 2008/237), **reg. 7(d)**
- C22 Art. 19 applied (with modifications) (1.7.2008) by Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) Regulations (Northern Ireland) 2008 (S.R. 2008/239), regs. 3, **7(d)**
- C23 Art. 19 applied (with modifications) (22.12.2008) by Eggs and Chicks (No. 2) Regulations (Northern Ireland) 2008 (S.R. 2008/451), **reg. 20**
- C24 Art. 19 applied (with modifications) (1.7.2009) by Contaminants in Food Regulations (Northern Ireland) 2009 (S.R. 2009/220), **reg. 5(1)(b)**
- C25 Art. 19 applied (with modifications) (31.7.2009) by Food Irradiation Regulations (Northern Ireland) 2009 (S.R. 2009/258), **reg. 11(1)(d)**
- C26 Art. 19 applied (with modifications) (1.1.2010) by Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) Regulations (Northern Ireland) 2009 (S.R. 2009/398), **reg. 4(b)**
- C27 Art. 19 applied (with modifications) (20.1.2010) by Food Enzymes Regulations (Northern Ireland) 2009 (S.R. 2009/415), **reg. 5(1)(a)**
- C28 Art. 19 applied (with modifications) (20.1.2010) by Food Additives Regulations (Northern Ireland) 2009 (S.R. 2009/416), **reg. 16(1)(b)**
- C29 Art. 19 applied (with modifications) (20.1.2010) by Food (Jelly Mini-Cups) (Emergency Control) Regulations (Northern Ireland) 2009 (S.R. 2009/417), **reg. 5(1)(b)**
- C30 Art. 19 applied (with modifications) (6.4.2010) by Fish Labelling Regulations (Northern Ireland) 2010 (S.R. 2010/54), **reg. 10(b)**
- C31 Art. 19 applied (with modifications) (28.4.2010) by Eggs and Chicks Regulations (Northern Ireland) 2010 (S.R. 2010/125), **reg. 29**
- C32 Art. 19 applied (with modifications) (20.10.2010) by Contaminants in Food Regulations (Northern Ireland) 2010 (S.R. 2010/335), **reg. 5(1)(b)**
- C33 Art. 19 applied (with modifications) (20.1.2011) by Flavourings in Food Regulations (Northern Ireland) 2010 (S.R. 2010/414), **reg. 5(1)(a)**

- C34** Art. 19 applied (with modifications) (1.1.2012) by Foodstuffs Suitable for People Intolerant to [Gluten Regulations \(Northern Ireland\) 2010 \(S.R. 2010/338\)](#), **reg. 5(b)**
- C35** Art. 19 applied (with modifications) (1.7.2011) by [Plastic Kitchenware \(Conditions on Imports from China\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/236\)](#), **reg. 11(1)(a)**

### Defence of due diligence

**20.**—(1) In any proceedings for an offence under any of the preceding provisions of this Part, it shall, subject to paragraph (5), be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) Without prejudice to the generality of paragraph (1), a person charged with an offence under<sup>F23</sup> Article 13 or 14] who neither—

- (a) prepared the food in respect of which the offence is alleged to have been committed; nor
- (b) imported it into Northern Ireland,

shall be taken to have established the defence provided by that paragraph if he satisfies the requirements of paragraph (3) or (4).

(3) A person satisfies the requirements of this paragraph if he proves—

- (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;
- (b) that he carried out all such checks of the food in question as were reasonable in all the circumstances, or that it was reasonable in all the circumstances for him to rely on checks carried out by the person who supplied the food to him; and
- (c) that he did not know and had no reason to suspect at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision.

(4) A person satisfies the requirements of this paragraph if he proves—

- (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;
- (b) that the sale or intended sale of which the alleged offence consisted was not a sale or intended sale under his name or mark; and
- (c) that he did not know, and could not reasonably have been expected to know, at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision.

(5) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless—

- (a) at least 7 clear days before the hearing; and
- (b) where he has previously appeared before a court in connection with the alleged offence, before the expiration of one month from his first such appearance,

he has served on the prosecution a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(6) In paragraph (5) any reference to appearing before a court shall be construed as including a reference to being brought before a court.

*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Food Safety (Northern Ireland) Order 1991, PART II. (See end of Document for details)*

**F23** SR 2004/505

**Modifications etc. (not altering text)**

- C36** Art. 20 applied (with modifications) (1.7.2006) by Contaminants in Food Regulations (Northern Ireland) 2006 (S.R. 2006/256), **reg. 5(1)(c)**;  
 Art. 20 applied (with modifications) (18.10.2006) by Curd Cheese (Restriction on Placing on the Market) Regulations (Northern Ireland) 2006 (S.R. 2006/415), **reg. 4(b)**;  
 Art. 20 applied (with modifications) (9.11.2006) by Rice Products (Restriction on First Placing on the Market) Regulations (Northern Ireland) 2006 (S.R. 2006/443), **reg. 5(b)**
- C37** mod. by SR 2004/487
- C38** Art. 20 applied (1.3.2007) by Notification of Marketing of Food for Particular Nutritional Uses Regulations (Northern Ireland) 2007 (S.R. 2007/60), **reg. 7(d)**
- C39** Art. 20 applied (with modifications) (1.3.2007) by Quick-frozen Foodstuffs Regulations (Northern Ireland) 2007 (S.R. 2007/65), **reg. 10(d)**
- C40** Art. 20 applied (with modifications) (1.3.2007) by Contaminants in Food Regulations (Northern Ireland) 2007 (S.R. 2007/66), **reg. 5(1)(c)**
- C41** Art. 20 applied (with modifications) (1.3.2007) by Quick-frozen Foodstuffs (No.2) Regulations (Northern Ireland) 2007 (S.R. 2007/110), **reg. 10(d)**
- C42** Art. 20 applied (with modifications) (7.8.2007) by Addition of Vitamins, Minerals and Other Substances Regulations (Northern Ireland) 2007 (S.R. 2007/301), **reg. 5(d)**
- C43** Art. 20 applied (with modifications) (1.10.2007) by Nutrition and Health Claims Regulations (Northern Ireland) 2007 (S.R. 2007/349), **reg. 6(d)**
- C44** Art. 20 applied (with modifications) (3.8.2007) by Food (Suspension of the Use of E 128 Red 2G as Food Colour) Regulations (Northern Ireland) 2007 (S.R. 2007/352), **reg. 5(b)**
- C45** Art. 20 applied (31.10.2007) by Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2007 (S.R. 2007/420), **reg. 22(1)(d)** (with reg. 3)
- C46** Art. 20 applied (with modifications) (11.1.2008) by Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007 (S.R. 2007/506), **reg. 29(c)**
- C47** Art. 20 applied (with modifications) (12.3.2008) by Rice Products from the United States of America (Restriction on First Placing on the Market) Regulations (Northern Ireland) 2008 (S.R. 2008/99), **reg. 5(b)**
- C48** Art. 20 applied (with modifications) (14.4.2008) by Eggs and Chicks Regulations (Northern Ireland) 2008 (S.R. 2008/98), **reg. 20**
- C49** Art. 20 applied (with modifications) (15.4.2008) by Specified Products from China (Restriction on First Placing on the Market) Regulations (Northern Ireland) 2008 (S.R. 2008/171), **reg. 6(b)**
- C50** Art. 20 applied (with modifications) (1.7.2008) by Drinking Milk Regulations (Northern Ireland) 2008 (S.R. 2008/237), **reg. 7(e)**
- C51** Art. 20 applied (with modifications) (1.7.2008) by Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) Regulations (Northern Ireland) 2008 (S.R. 2008/239), regs. 3, **7(e)**
- C52** Art. 20 applied (with modifications) (22.12.2008) by Eggs and Chicks (No. 2) Regulations (Northern Ireland) 2008 (S.R. 2008/451), **reg. 20**
- C53** Art. 20 applied (with modifications) (1.7.2009) by Contaminants in Food Regulations (Northern Ireland) 2009 (S.R. 2009/220), **reg. 5(1)(c)**
- C54** Art. 20 applied (with modifications) (31.7.2009) by Food Irradiation Regulations (Northern Ireland) 2009 (S.R. 2009/258), **reg. 11(1)(e)**
- C55** Art. 20 applied (with modifications) (1.1.2010) by Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) Regulations (Northern Ireland) 2009 (S.R. 2009/398), **reg. 4(c)**
- C56** Art. 20 applied (with modifications) (20.1.2010) by Food Enzymes Regulations (Northern Ireland) 2009 (S.R. 2009/415), **reg. 5(1)(b)**



- C57 Art. 20 applied (with modifications) (20.1.2010) by [Food Additives Regulations \(Northern Ireland\) 2009 \(S.R. 2009/416\)](#), **reg. 16(1)(c)**
- C58 Art. 20 applied (with modifications) (20.1.2010) by [Food \(Jelly Mini-Cups\) \(Emergency Control\) Regulations \(Northern Ireland\) 2009 \(S.R. 2009/417\)](#), **reg. 5(1)(c)**
- C59 Art. 20 applied (with modifications) (6.4.2010) by [Fish Labelling Regulations \(Northern Ireland\) 2010 \(S.R. 2010/54\)](#), **reg. 10(c)**
- C60 Art. 20 applied (with modifications) (28.4.2010) by [Eggs and Chicks Regulations \(Northern Ireland\) 2010 \(S.R. 2010/125\)](#), **reg. 29**
- C61 Art. 20 applied (with modifications) (20.10.2010) by [Contaminants in Food Regulations \(Northern Ireland\) 2010 \(S.R. 2010/335\)](#), **reg. 5(1)(c)**
- C62 Art. 20 applied (with modifications) (20.1.2011) by [Flavourings in Food Regulations \(Northern Ireland\) 2010 \(S.R. 2010/414\)](#), **reg. 5(1)(b)**
- C63 Art. 20 applied (with modifications) (1.1.2012) by [Foodstuffs Suitable for People Intolerant to Gluten Regulations \(Northern Ireland\) 2010 \(S.R. 2010/338\)](#), **reg. 5(c)**
- C64 Art. 20 applied (with modifications) (1.7.2011) by [Plastic Kitchenware \(Conditions on Imports from China\) Regulations \(Northern Ireland\) 2011 \(S.R. 2011/236\)](#), **reg. 11(1)(b)**
- C65 Art. 20(1) applied (with modifications) (20.5.2006) by [Ceramic Articles in Contact with Food Regulations \(Northern Ireland\) 2006 \(S.R. 2006/217\)](#), **reg. 7(b)**
- C66 Art. 20(5) applied (with modifications) (20.5.2006) by [Ceramic Articles in Contact with Food Regulations \(Northern Ireland\) 2006 \(S.R. 2006/217\)](#), **reg. 7(b)**
- C67 Art. 20(6) applied (with modifications) (20.5.2006) by [Ceramic Articles in Contact with Food Regulations \(Northern Ireland\) 2006 \(S.R. 2006/217\)](#), **reg. 7(b)**

### Defence of publication in the course of business

21. In proceedings for an offence under any of the preceding provisions of this Part consisting of the advertisement for sale of any food, it shall be a defence for the person charged to prove—

- (a) that he is a person whose business it is to publish or arrange for the publication of advertisements; and
- (b) that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under that provision.

### Modifications etc. (not altering text)

- C68 Art. 21 applied (1.3.2007) by [Notification of Marketing of Food for Particular Nutritional Uses Regulations \(Northern Ireland\) 2007 \(S.R. 2007/60\)](#), **reg. 7(e)**
- C69 Art. 21 applied (with modifications) (7.8.2007) by [Addition of Vitamins, Minerals and Other Substances Regulations \(Northern Ireland\) 2007 \(S.R. 2007/301\)](#), **reg. 5(e)**
- C70 Art. 21 applied (with modifications) (1.10.2007) by [Nutrition and Health Claims Regulations \(Northern Ireland\) 2007 \(S.R. 2007/349\)](#), **reg. 6(e)**
- C71 Art. 21 applied (31.10.2007) by [Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations \(Northern Ireland\) 2007 \(S.R. 2007/420\)](#), **reg. 22(1)(e)** (with reg. 3)
- C72 Art. 21 applied (with modifications) (1.7.2008) by [Spreadable Fats \(Marketing Standards\) and the Milk and Milk Products \(Protection of Designations\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/239\)](#), **regs. 3, 7(f)**
- C73 Art. 21 applied (with modifications) (20.1.2010) by [Food Additives Regulations \(Northern Ireland\) 2009 \(S.R. 2009/416\)](#), **reg. 16(1)(d)**

*Status: Point in time view as at 01/01/2006.*

*Changes to legislation: There are currently no known outstanding effects for the The Food Safety (Northern Ireland) Order 1991, PART II. (See end of Document for details)*

### *Miscellaneous and supplemental*

#### **Provision of food hygiene training**

**22.**—(1) [<sup>F24</sup>The Department of Agriculture or as the case may be, [<sup>F25</sup> the Food Standards Agency or] a district council (whether within or outside its district) may provide] training courses in food hygiene for persons who are or intend to become involved in food businesses, whether as proprietors or employees or otherwise.

*Para. (2) rep. by 1996 NI 12*

(3) A district council or, as the case may be, that Department may contribute towards the expenses incurred under this Article by any other council or, as the case may be, that Department, or towards expenses incurred by any other person in providing, such courses as are mentioned in paragraph (1)<sup>F24</sup>. . . .

**F24** 1996 NI 12

**F25** 1999 c. 28

#### **Provision of facilities for cleansing shellfish**

**23.**—(1) A district council may provide, whether within or outside its district, tanks or other apparatus for cleansing shellfish.

(2) A district council may contribute towards the expenses incurred under this Article by any other council, or towards expenses incurred by any other person in providing, and making available to the public, tanks or other apparatus for cleansing shellfish.

(3) Nothing in this Article shall authorise the establishment of any tank or other apparatus, or the execution of any other work, on, over or under tidal lands below high#water mark of ordinary spring tides, except in accordance with such plans and sections, and subject to such restrictions and conditions, as may before the work is commenced be approved by the Department of the Environment.

(4) In this Article “cleansing”, in relation to shellfish, includes subjecting them to any germicidal treatment.

*Art. 24 rep. by 1999 c.28*

#### **Regulations and orders: supplementary provisions**

**25.**—(1) Regulations under this Part may—

(a) make provision for prohibiting or regulating the carrying out of commercial operations with respect to any food, food source or contact material—

(i) which fails to comply with the regulations; or

(ii) in relation to which an offence against the regulations has been committed, or would have been committed if any relevant act or omission had taken place in Northern Ireland; and

(b) without prejudice to the generality of Article 8, provide that any food which, in accordance with the regulations, is certified as being such food as is mentioned in sub#paragraph (a) may be treated for the purposes of that Article as failing to comply with food safety requirements.

(2) Regulations under this Part may also—

(a) require persons carrying on any activity to which the regulations apply to keep and produce records and provide returns;



- (b) prescribe the particulars to be entered on any register required to be kept in accordance with the regulations;
  - (c) require any such register to be open to inspection by the public at all reasonable times and, subject to that, authorise it to be kept by means of a computer;
  - (d) prescribe the periods for which and the conditions subject to which licences may be issued, and provide for the subsequent alteration of conditions and for the cancellation, suspension or revocation of licences;
  - (e) provide for an appeal to a magistrates' court against any decision of a district council<sup>F26</sup>, the Food Standards Agency] or the Department of Agriculture or of an authorised officer.
- (3) Regulations under this Part<sup>F26</sup> . . . may—
- (a) provide that an offence under the regulations<sup>F26</sup> . . . shall be punishable on summary conviction or on indictment or in either one way or the other; and
  - (b) include provisions under which a person guilty of such an offence shall be liable to such penalties (not exceeding those which may be imposed in respect of offences under this Order) as may be specified in the regulations<sup>F26</sup> . . . .

**F26** 1999 c. 28

**Status:**

Point in time view as at 01/01/2006.

**Changes to legislation:**

There are currently no known outstanding effects for the The Food Safety (Northern Ireland) Order 1991, PART II.