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STATUTORY INSTRUMENTS

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**1991 No. 762**

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

**PART III**

**ADMINISTRATION AND ENFORCEMENT**

*Administration*

**Enforcement of this Order**

**26.**—(1) The provisions of this Order shall be enforced and executed—

- (a) except as provided by sub-paragraphs (b) and (c) and by Article 12(8), in the case of all foods, by each district council within its district;
- (b) in the case of imported milk or milk in liquid milk plants or dairy farms, by the Department of Agriculture;
- (c) in the case of—
  - (i) the control on residues in meat or milk of veterinary drugs and such other substances as may be specified in an order;
  - (ii) the use of novel processes or treatments in the preparation of food;
  - (iii) novel foods, genetically modified food sources, food sources from which novel foods are intended to be derived or foods derived from genetically modified food sources;by each district council within its district and the Department of Agriculture.

(2) The Department may direct, in relation to cases of a particular description or a particular case, that any duty imposed on district councils by paragraph (1) shall be discharged by the Department and not by those councils.

(3) Regulations or orders shall specify which authorities are to enforce and execute them, either generally or in relation to cases of a particular description or a particular area, and any such regulations or orders may provide for the giving of assistance and information, by any authority concerned in the administration of the regulations or orders, or of any provisions of this Order, to any other authority so concerned, for the purposes of their respective duties under them.

(4) The Department may take over the conduct of any such proceedings which have been instituted by a district council.

(5) Any environmental health officer appointed by a district council in exercise of its powers under section 41 of the Local Government Act (Northern Ireland) 1972(1) shall be deemed to be an authorised officer of that council for the purposes of this Order.

### **Appointment of public and other analysts**

27.—(1) Every district council shall appoint in accordance with this Article one or more than one person ( “public analysts”) to act as analysts within the district of the council for the purposes of the functions conferred on district councils by this Order.

(2) A person shall not be appointed as a public analyst unless he possesses—

- (a) such qualifications as may be prescribed by regulations; or
- (b) such other qualifications as the Department may approve.

(3) A person who is engaged directly or indirectly in any food business which is carried on in any district shall not be appointed public analyst for that district.

(4) A district council shall pay to a public analyst such remuneration as may be agreed upon by the council and the analyst, and that remuneration may be expressed to be payable—

- (a) in addition to any fees received by him under this Part; or
- (b) on condition that any fees so received by him are paid over by him to the council.

(5) A district council which appoints only one public analyst may appoint also a deputy to act during any vacancy in the office of public analyst, or during the absence or incapacity of the holder of the office, and the provisions of paragraphs (2) to (4) shall apply in relation to a deputy public analyst as they apply in relation to a public analyst.

(6) The Department of Agriculture may appoint one or more than one person to act as analysts for the purposes of the functions conferred on that Department by this Order; and the provisions of paragraphs (2), (4) and (5) shall apply to an analyst appointed by that Department under this paragraph as they apply to a public analyst appointed by a district council under paragraph (1) with the following modifications—

- (a) in paragraph (2)(b) for the reference to the Department there shall be substituted a reference to the Department of Agriculture; and
- (b) in paragraphs (4) and (5) for any reference to a district council there shall be substituted a reference to the Department of Agriculture.

### **Provision of facilities for examinations**

28. A district council may provide facilities for examinations for the purposes of this Order.

*Sampling and analysis, etc.*

### **Procurement of samples**

29. An authorised officer may—

- (a) purchase a sample of any food, or any substance capable of being used in the preparation of food;
- (b) take a sample of any food, or any such substance, which—
  - (i) appears to him to be intended for sale, or to have been sold, for human consumption; or
  - (ii) is found by him on or in any premises which he is authorised to enter by or under Article 33;
- (c) take a sample from any food source, or a sample of any contact material, which is found by him on or in any such premises;

- (d) take a sample of any article or substance which is found by him on or in any such premises and which he has reason to believe may be required as evidence in proceedings under any of the provisions of this Order or of regulations or orders made under it.

**Analysis, etc., of samples procured by authorised officer of a district council**

**30.**—(1) An authorised officer of a district council who has procured a sample under Article 29 shall—

- (a) if he considers that the sample should be analysed, submit it to be analysed either—
  - (i) by the public analyst for the district in which the sample was procured; or
  - (ii) by the public analyst for the district which consists of or includes the district of the council;
- (b) if he considers that the sample should be examined, submit it to be examined by a food examiner.

(2) A person, other than such an officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it—

- (a) to be analysed by the public analyst for the district in which the purchase was made; or
- (b) to be examined by a food examiner.

(3) If, in any case where a sample is proposed to be submitted for analysis under this Article, the office of public analyst for the district in question is vacant, the sample shall be submitted to the public analyst for some other district.

(4) If, in any case where a sample is proposed to be or is submitted for analysis or examination under this Article, the food analyst or examiner determines that he is for any reason unable to perform the analysis or examination, the sample shall be submitted or, as the case may be, sent by him to such other food analyst or examiner as he may determine.

(5) A food analyst or examiner shall analyse or examine as soon as practicable any sample submitted or sent to him under this Article, but may, except where—

- (a) he is the public analyst for the district in question; and
- (b) the sample is submitted to him for analysis by an authorised officer of a district council,

demand in advance the payment of such reasonable fee as he may require.

(6) A food analyst or examiner who has analysed or examined a sample shall give to the person by whom it was submitted a certificate specifying the result of the analysis or examination.

(7) Any certificate given by a food analyst or examiner under paragraph (6) shall be signed by him, but the analysis or examination may be made by any person acting under his direction.

(8) In any proceedings under this Order, the production by one of the parties—

- (a) of a document purporting to be a certificate given by a food analyst or examiner under paragraph (6); or
- (b) of a document supplied to him by the other party as being a copy of such a certificate,

shall be sufficient evidence of the facts stated in it unless, in a case falling within sub-paragraph (a), the other party requires that the food analyst or examiner shall be called as a witness.

(9) In this Article—

“food analyst” means a public analyst or any other person who possesses the requisite qualifications to carry out analyses for the purposes of this Order;

“food examiner” means any person who possesses the requisite qualifications to carry out examinations for the purposes of this Order;

“the requisite qualifications” means such qualifications as may be prescribed by regulations, or such other qualifications as the Department may approve;

“sample”, in relation to an authorised officer of a district council, includes any part of a sample retained by him in pursuance of regulations under Article 32;

and where 2 or more than 2 public analysts are appointed for any district, any reference in this Article to the public analyst for that district shall be construed as a reference to either or any of them.

### **Analysis, etc., of samples procured by authorised officer of the Department of Agriculture**

**31.**—(1) An authorised officer of the Department of Agriculture who has procured a sample under Article 29 may—

- (a) if he considers that the sample should be analysed by an analyst appointed under Article 27(6), submit it to be so analysed;
- (b) if he considers that the sample should be examined by a food examiner, submit it to be so examined.

(2) Paragraphs (4) to (8) of Article 30 shall apply for the purpose of the analysis or examination of a sample submitted under paragraph (1) of this Article as they apply for the purpose of the analysis or examination of a sample submitted under paragraph (1) of Article 30.

(3) For the purposes of this Article—

“food analyst” means an analyst appointed under Article 27(6) or any other person who possesses the requisite qualifications to carry out analyses for the purposes of this Order;

“food examiner” means any person who possesses the requisite qualifications to carry out examinations for the purposes of this Order;

“the requisite qualifications” means such qualifications as may be prescribed by regulations, or such other qualifications as the Department of Agriculture may approve;

“sample”, in relation to an authorised officer of the Department of Agriculture, includes any part of a sample retained by him in pursuance of regulations under Article 32.

### **Regulation of sampling and analysis, etc.**

**32.**—(1) Regulations may make provision for supplementing or modifying the provisions of Articles 29 to 31.

(2) Without prejudice to the generality of paragraph (1), regulations made under that paragraph may make provision with respect to—

- (a) the matters to be taken into account in determining whether, and at what times, samples should be procured;
- (b) the manner of procuring samples, including the steps to be taken in order to ensure that any samples procured are fair samples;
- (c) the method of dealing with samples, including (where appropriate) their division into parts;
- (d) the persons to whom parts of samples are to be given and the persons by whom such parts are to be retained;
- (e) the notices which are to be given to, and the information which is to be furnished by, the persons in charge of any food, substance, contact material or food source of or from which samples are procured;
- (f) the methods which are to be used in analysing or examining samples, or parts of samples, or in classifying the results of analyses or examinations;

- (g) the circumstances in which a food analyst or examiner is to be precluded, by reason of a conflict of interest, from analysing or examining a particular sample or part of a sample; and
- (h) the circumstances in which samples, or parts of samples, are to be or may be submitted for analysis or examination—
  - (i) to the Government Chemist, or to such other food analyst or examiner as he may direct; or
  - (ii) to a person determined by or under the regulations.

*Powers of entry and obstruction, etc.*

**Powers of entry**

**33.**—(1) An authorised officer shall, on producing, if so required, some duly authenticated document showing his authority, have a right at all reasonable hours—

- (a) to enter any premises for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of this Order, or of regulations or orders made under it; and
- (b) to enter any premises for the purpose of the performance by the district council or, as the case may be, the Department of Agriculture of its functions under this Order; and
- (c) in the case of an authorised officer of a district council, to enter any business premises outside the council's district for the purpose of ascertaining whether there is on the premises any evidence of any contravention within that district of any of the provisions of this Order or of regulations or orders made under it.

(2) Admission to any premises used only as a private dwelling-house shall not be demanded under paragraph (1) as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(3) If a justice of the peace, on sworn complaint in writing, is satisfied that there is reasonable ground for entry into any premises for any purpose mentioned in paragraph (1) and either—

- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,

the justice may by warrant signed by him authorise the authorised officer to enter the premises, if need be by reasonable force.

(4) Every warrant granted under this Article shall continue in force for a period of one month.

(5) An authorised officer entering any premises by virtue of this Article, or of a warrant issued under it, may take with him such other persons as he considers necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as he found them.

(6) An authorised officer entering premises by virtue of this Article, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are kept by means of a computer—

- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and

- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require.
- (7) Any officer exercising any power conferred by paragraph (6) may—
- (a) seize and detain any records which he has reason to believe may be required as evidence in proceedings under any of the provisions of this Order or of regulations or orders made under it; and
  - (b) where the records are kept by means of a computer, may require the records to be produced in a form in which they may be taken away.
- (8) If any person who enters any premises by virtue of this Article, or of a warrant issued under it, discloses to any person any information obtained by him in the premises with regard to any trade secret, he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.
- (9) Nothing in this Order authorises any person, except with the permission of the Department of Agriculture under the Diseases of Animals (Northern Ireland) Order 1981(2), to enter any premises—
- (a) in which there is kept an animal or bird affected or, with good reason, suspected of being affected with any disease to which that Order of 1981 applies; and
  - (b) which is situated in a place declared under that Order of 1981 to be infected with such a disease.

#### **Obstruction, etc., of officers**

**34.**—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of this Order; or
- (b) without reasonable cause, fails to give to any person acting in the execution of this Order any assistance or information which that person may reasonably require of him for the performance of his functions under this Order,

shall be guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

- (a) furnishes information which he knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular,

shall be guilty of an offence.

(3) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

#### *Offences*

#### **Time limit for prosecutions**

**35.** A prosecution for an offence under this Order which is punishable under Article 36(2) shall not be begun after the expiry of—

- (a) 3 years from the commission of the offence; or
- (b) one year from its discovery by the prosecution,

whichever is the earlier.

### **Punishment of offences**

**36.**—(1) A person guilty of an offence under Article 34(1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 3 months or to both.

(2) A person guilty of any other offence under this Order shall be liable—

(a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both;

(b) on summary conviction, to a fine not exceeding the relevant amount or to imprisonment for a term not exceeding 6 months or to both.

(3) In paragraph (2) “the relevant amount” means—

(a) in the case of an offence under Article 6, 7 or 13, £20,000;

(b) in any other case, the statutory maximum.

### *Appeals*

### **Appeals**

**37.**—(1) Any person who is aggrieved by—

(a) a decision of an authorised officer to serve an improvement notice;

(b) a decision of a district council or, as the case may be, the Department of Agriculture to refuse to issue such a certificate as is mentioned in Article 10(6) or 11(8); or

(c) subject to paragraph (2), a decision of a district council or, as the case may be, the Department of Agriculture to refuse, cancel, suspend or revoke a licence required by regulations under Part II,

may appeal to a court of summary jurisdiction.

(2) The procedure on an appeal to a court of summary jurisdiction under paragraph (1), or an appeal to such a court for which provision is made by regulations under Part II, shall be by way of notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(3).

(3) In any case where such an appeal as is mentioned in paragraph (2) lies, the document notifying the decision to the person concerned shall state—

(a) the right of appeal to a court of summary jurisdiction; and

(b) the period within which such an appeal may be brought.

### **Appeals against improvement notices**

**38.**—(1) On an appeal against an improvement notice, the court may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.

(2) Where, apart from this paragraph, any period specified in an improvement notice would include any day on which an appeal against that notice is pending, that day shall be excluded from that period.

(3) An appeal shall be regarded as pending for the purposes of paragraph (2) until it is determined or abandoned.

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

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