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STATUTORY RULES OF NORTHERN IRELAND

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**2006 No. 3**

**The Food Hygiene Regulations (Northern Ireland) 2006**

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1. These Regulations may be cited as the Food Hygiene Regulations (Northern Ireland) 2006 and shall come into operation on 11th January 2006.

**Interpretation**

2.—(1) In these Regulations—

“the Agency” means the Food Standards Agency;

“authorised officer”, in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under the Hygiene Regulations;

“the Community Regulations” means Regulation 852/2004, Regulation 853/2004, Regulation 854/2004, Regulation 2073/2005 and Regulation 2075/2005;

“Directive 2004/41”, “Regulation 178/2002”, “Regulation 1642/2003”, “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 854/2004”, “Regulation 882/2004”, “Regulation 1688/2005”, “Regulation 2073/2005”, “Regulation 2074/2005”, “Regulation 2075/2005” and “Regulation 2076/2005” have the meanings respectively given to them in Schedule 1;

“the Department” means the Department of Health, Social Services and Public Safety;

“enforcement authority” means the authority which, by virtue of regulation 5, is responsible for executing and enforcing the Hygiene Regulations;

“the Hygiene Regulations” means these Regulations and the Community Regulations;

“the Order” means the Food Safety (Northern Ireland) Order 1991(1);

“premises” includes any establishment, any place, vehicle, stall or moveable structure and any ship or aircraft; and

“specified Community provision” means any provision of the Community Regulations that is specified in Column 1 of Schedule 2 and whose subject-matter is described in Column 2 of that Schedule.

(2) Subject to paragraph (3), any expression other than one defined in paragraph (1) that is used both in these Regulations and in the Order has the meaning it bears in the Order.

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(1) [S.I. 1991/762 \(N.I.7\)](#) as amended by [S.I. 1996/1633 \(N.I. 12\)](#) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c. 28, paragraph 2 of Article 2 (regarding the definition of “food”) was substituted by [S.R. 2004 No. 482](#)

(3) Unless the context otherwise requires, any expression used both in these Regulations and in Regulation 178/2002 or the Community Regulations has the meaning it bears in Regulation 178/2002 or the Community Regulations, as the case may be.

(4) Where, apart from this paragraph, any period of less than seven days which is specified in these Regulations would include any day which is—

(a) a Saturday, a Sunday, Christmas Day or Good Friday; or

(b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971<sup>(2)</sup>, that shall be excluded from the period.

(5) The Interpretation Act (Northern Ireland) 1954<sup>(3)</sup> shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

### **Presumptions that food is intended for human consumption**

3.—(1) The following paragraphs shall apply for the purposes of these Regulations.

(2) Any food commonly used for human consumption shall, if placed on the market or offered, exposed or kept for placing on the market, be presumed, until the contrary is proved, to have been placed on the market or, as the case may be, to have been or to be intended for placing on the market for human consumption.

(3) The following, namely—

(a) any food commonly used for human consumption which is found on premises used for the preparation, storage, or placing on the market of that food; and

(b) any article or substance commonly used in the manufacture of food for human consumption which is found on premises used for the preparation, storage or placing on the market of that food,

shall be presumed, until the contrary is proved, to be intended for placing on the market, or for manufacturing food for placing on the market, for human consumption.

(4) Any article or substance capable of being used in the composition or preparation of any food commonly used for human consumption which is found on premises on which that food is prepared shall, until the contrary is proved, be presumed to be intended for such use.

### **Competent authority**

4. The competent authority for the purposes of the Community Regulations shall be the Agency except where it has delegated competences as provided for in those Regulations.

### **Enforcement**

5.—(1) In respect of any food business operator to whose operations Regulation 852/2004 applies but Regulation 853/2004 does not apply—

(a) the Agency or the district council in whose district the food business operator carries out his operation shall execute and enforce the Hygiene Regulations in so far as the operator concerned is carrying out primary production and those associated operations listed in paragraph 1 of Part AI of Annex I to Regulation 852/2004 other than the associated operations described in sub-paragraphs (a) and (c) of that paragraph to the extent that they concern wild game; and

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(2) 1971 c. 80

(3) 1954 c. 33 (N.I.)

- (b) the district council in whose district the food business operator carries out his operations shall execute and enforce the Hygiene Regulations in so far as the operator concerned is carrying out operations which are not executed and enforced by the Agency or the district council as provided for in sub-paragraph (a).
- (2) In respect of any food business operator to whose operations both Regulation 852/2004 and Regulation 853/2004 apply—
- (a) the Agency shall execute and enforce the Hygiene Regulations in so far as the operator concerned is carrying out operations in relation to—
- (i) a slaughterhouse,
  - (ii) a game-handling establishment,
  - (iii) a cutting plant, and
  - (iv) the activities in respect of eggs as set out in Chapter I of Section X of Annex III to Regulation 853/2004;
- (b) the Agency or the district council in whose district the food business operator carries out his operations shall execute and enforce the Hygiene Regulations in so far as the operator concerned is carrying out operations in relation to any establishment that is not specified in sub-paragraph (a).
- (3) In respect of—
- (a) collection centres and tanneries supplying raw material for the production of gelatine intended for human consumption pursuant to paragraph 5 of Chapter I of Section XIV of Annex III to Regulation 853/2004; and
- (b) collection centres and tanneries supplying raw material for the production of collagen intended for human consumption pursuant to paragraph 5 of Chapter I of Section XV of Annex III to Regulation 853/2004,
- the Agency shall execute and enforce the Hygiene Regulations.
- (4) Each district council shall execute and enforce these Regulations in its district in relation to the matters regulated by Schedules 3 to 5.
- (5) The Agency shall execute and enforce these Regulations in relation to the matters regulated by Schedule 6.
- (6) In this regulation—
- “cutting plant” means an establishment which is used for boning and/or cutting up fresh meat for placing on the market and which—
- (a) is approved or conditionally approved under Article 31(2) of Regulation 882/2004; or
  - (b) (although lacking the approval or conditional approval that it requires under Article 4(3) of Regulation 853/2004) was, on 31st December 2005, operating as licensed cutting premises under the Fresh Meat (Hygiene and Inspection) Regulations (Northern Ireland) 1997(4) or the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations (Northern Ireland) 1995(5);
- “game-handling establishment” means any establishment in which game and game meat obtained after hunting are prepared for placing on the market and which—
- (a) is approved or conditionally approved under Article 31(2) of Regulation 882/2004; or
  - (b) (although lacking the approval or conditional approval that it requires under Article 4(3) of Regulation 853/2004) was, on 31st December 2005, operating as a licensed wild game

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(4) S.R. 1997 No. 493, revoked by S.R. 2005 No. 356

(5) S.R. 1995 No. 396, revoked by these Regulations

processing facility under the Wild Game (Hygiene and Inspection) Regulations (Northern Ireland) 1997(6); and

“slaughterhouse” means an establishment used for slaughtering and dressing animals, the meat of which is intended for human consumption and which—

- (a) is approved or conditionally approved under Article 31(2) of Regulation 882/2004; or
- (b) (although lacking the approval or conditional approval that it requires under Article 4(3) of Regulation 853/2004) was, on 31st December 2005, operating as a licensed slaughterhouse under the Fresh Meat (Hygiene and Inspection) Regulations (Northern Ireland) 1997 or the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations (Northern Ireland) 1995.

## PART 2

### MAIN PROVISIONS

#### Hygiene improvement notices

6.—(1) If an authorised officer has reasonable grounds for believing that a food business operator is failing to comply with the Hygiene Regulations, he may by a notice served on that person (a “hygiene improvement notice”)—

- (a) state the officer’s grounds for believing that the food business operator is failing to comply with the Hygiene Regulations;
- (b) specify the matters which constitute the food business operator’s failure to comply;
- (c) specify the measures which, in the officer’s opinion, the food business operator must take in order to secure compliance; and
- (d) require the food business operator 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 a hygiene improvement notice shall be guilty of an offence.

#### Hygiene prohibition orders

7.—(1) If—

- (a) a food business operator is convicted of an offence under these Regulations; and
- (b) the court by or before which he is so convicted is satisfied that the health risk condition is fulfilled with respect to the food business concerned,

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 (including any impairment, whether permanent or temporary), 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.

- (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; and
  - (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) a food business operator is convicted of an offence under these Regulations; 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 an order, impose a prohibition on the food business operator 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 “hygiene prohibition order”), the enforcement authority shall—

- (a) serve a copy of the order on the relevant food business operator; and
- (b) in the case of an order made under paragraph (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as they consider appropriate,

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

- (6) A hygiene prohibition order shall cease to have effect—
- (a) in the case of an order made under paragraph (1), on the issue by the enforcement authority of a certificate to the effect that they are satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business; and
  - (b) in the case of an order made under paragraph (4), on the giving by the court of a direction to that effect.

(7) The enforcement authority shall issue a certificate under paragraph (6)(a) within three days of their being satisfied as mentioned in that sub-paragraph; and on an application by the food business operator for such a certificate, the authority 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 they are so satisfied; and
- (b) if they determine that they are not so satisfied, give notice to the food business operator of the reasons for that determination.

(8) The court shall give a direction under paragraph (6)(b) if, on an application by the food business operator, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the food business operator 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 hygiene prohibition order; or
- (b) before the expiration of 3 months from the making by the food business operator of a previous application for such a direction.

(9) Where a magistrates' court makes an order under regulation 8(2) with respect to any food business, paragraph (1) shall apply as if the food business operator had been convicted by the court of an offence under these Regulations.

(10) Where the commission of an offence by a food business operator leads to the conviction of another person pursuant to regulation 10, paragraph (4) shall apply in relation to that other person as it applies in relation to the food business operator and any reference in paragraph (5) or (8) to the food business operator shall be construed accordingly.

### **Hygiene emergency prohibition notices and orders**

**8.**—(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 relevant food business operator (a “hygiene 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 an order (a “hygiene emergency prohibition order”), impose the appropriate prohibition.

(3) Such an officer shall not apply for a hygiene emergency prohibition order unless, at least one day before the date of the application, he has served notice on the relevant food business operator of his intention to apply for the order.

(4) Paragraphs (2) and (3) of regulation 7 shall apply for the purposes of this regulation as they apply for the purposes of that regulation, but as if the reference in paragraph (2) to risk of injury to health were a reference to imminent risk of injury.

(5) As soon as practicable after the service of a hygiene emergency prohibition notice, the authorised officer shall affix a copy of the notice in a conspicuous position on such premises used for the purposes of the food business as he 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 a hygiene emergency prohibition order, an authorised officer shall—

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

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

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

- (a) if no application for a hygiene 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; or
- (b) if such an application is so made, on the determination or abandonment of the application.

(8) A hygiene emergency prohibition notice or a hygiene emergency prohibition order shall cease to have effect on the issue by the enforcement authority of a certificate to the effect that they are satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business.

(9) The enforcement authority 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 food business operator for such a certificate, the authority shall—

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

(10) Where a hygiene emergency prohibition notice is served on a food business operator, the enforcement authority shall compensate him in respect of any loss suffered by reason of his complying with the notice unless—

- (a) an application for a hygiene emergency prohibition order is made before the expiration of 3 days beginning 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 food 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 the Department.

### **Remedial action notices and detention notices**

**9.**—(1) Where it appears to an authorised officer that in respect of an establishment subject to approval under Article 4(2) of Regulation 853/2004—

- (a) any of the requirements of the Hygiene Regulations is being breached; or
- (b) inspection under the Hygiene Regulations is being hampered,

he may, by a notice in writing (a “remedial action notice”) served on the relevant food business operator or his duly authorised representative—

- (c) prohibit the use of any equipment or any part of the establishment specified in the notice;
- (d) impose conditions upon or prohibit the carrying out of any process; or
- (e) require the rate of operation to be reduced to such extent as is specified in the notice, or to be stopped completely.

(2) A remedial action notice shall be served as soon as practicable and shall state why it is being served.

(3) If it is served under paragraph (1)(a), it shall specify the breach and the action needed to remedy it.

(4) An authorised officer of the enforcement authority whose authorised officer served the original remedial action notice shall, as soon as he is satisfied that such action has been taken, withdraw the notice by a further notice in writing served on the food business operator or his duly authorised representative.

(5) An authorised officer of an enforcement authority may, at an establishment subject to approval under Article 4(2) of Regulation 853/2004, by a notice in writing (in this regulation referred to as a “detention notice”) served on the relevant food business operator or his duly authorised representative, require the detention of any animal or food present for the purpose of examination (including the taking of samples).

(6) An authorised officer of the enforcement authority whose officer served the original detention notice shall, as soon as he is satisfied that the animal or food need no longer be detained, withdraw the notice by a further notice in writing served on the food business operator or his duly authorised representative.

(7) Any person who fails to comply with a remedial action notice or a detention notice shall be guilty of an offence.

### **Offences due to fault of another person**

**10.** Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

### **Defence of due diligence**

11.—(1) In any proceedings for an offence under these Regulations, it shall, subject to paragraph (2), be a defence for the accused 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) 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 accused shall not, without leave of the court, be entitled to rely on that defence unless—

- (a) at least seven 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 prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

## **PART 3**

### **ADMINISTRATION AND ENFORCEMENT**

#### **Procurement of samples**

12. 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 placing on the market or to have been placed on the market, for human consumption, or
  - (ii) is found by him on or in any premises which he is authorised to enter by or under regulation 14;
- (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; and
- (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 these Regulations.

#### **Analysis etc. of samples**

13.—(1) An authorised officer who has procured a sample under regulation 12 shall—

- (a) if he considers that the sample should be analysed, submit it to be analysed—
  - (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; and
- (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 regulation, 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 regulation, 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 regulation, 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,

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

(6) Any 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 these Regulations, 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) Where two or more public analysts are appointed for any district, any reference in this regulation to the public analyst for that district shall be construed as a reference to either or any of them.

(10) The Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991(7) shall apply in relation to a sample procured by an authorised officer of a district council under regulation 12 as if it were a sample procured by an authorised officer under Article 29 of the Order.

(11) The certificate given by a food analyst or examiner under paragraph (6) shall be in the form set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991.

## **Powers of entry**

**14.—**(1) An authorised officer of the district council, 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 within his district for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of the Hygiene Regulations;
- (b) to enter any premises for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within his district; and
- (c) to enter any premises for the purpose of the performance of their functions under the Hygiene Regulations,

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(7) [S.R. 1991 No. 198](#), to which there are amendments not relevant to these Regulations

but admission to any premises used only as a private dwelling-house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(2) An authorised officer of the Agency shall, on producing if so required some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of—

- (a) ascertaining whether there is or has been on the premises any contravention of the provisions of the Hygiene Regulations;
- (b) ascertaining whether there is on the premises any evidence of any such contravention; and
- (c) the performance by the Agency of its functions under the Hygiene Regulations,

but admission to any premises used only as a private dwelling-house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(3) If a lay magistrate, on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any purpose as is mentioned in paragraph (1) or (2) 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 is temporarily absent,

the lay magistrate 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 regulation shall continue in force for a period of one month.

(5) An authorised officer entering any premises by virtue of this regulation, 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 regulation, 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 stored in any electronic form—

- (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 these Regulations; and
- (b) where the records are stored in any electronic form, 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 regulation, or of a warrant issued under it, discloses to any person any information obtained by him on 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 regulation authorises any person, except with the permission of the Department of Agriculture and Rural Development under the Diseases of Animals (Northern Ireland) Order 1981(8), 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 the Order of 1981 to be infected with such a disease.

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

15.—(1) Any person who—

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

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.

### **Time limit for prosecutions**

16. No prosecution for an offence under these Regulations which is punishable under regulation 17(2) shall be begun after the expiry of—

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

whichever is the earlier.

### **Offences and penalties**

17.—(1) Subject to paragraph (4), any person who contravenes any of the specified Community provisions shall be guilty of an offence.

(2) Subject to paragraph (3), a person guilty of an offence under these Regulations shall be liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.

(3) A person guilty of an offence under regulation 15 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 three months or to both.

(4) A person shall be considered not to have contravened Article 4(2) of Regulation 852/2004 as read with paragraph 4 of Chapter IV of Annex II to that Regulation (bulk foodstuffs in liquid, granulate or powder form to be transported in receptacles and/or containers/tankers reserved for the transport of foodstuffs) provided the requirements of Schedule 3 are complied with.

### **Offences by bodies corporate**

**18.**—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In paragraph (1)(a) “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.

### **Right of appeal**

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

- (a) a decision of an authorised officer to serve a hygiene improvement notice;
- (b) a decision of an enforcement authority to refuse to issue a certificate under regulation 7(6) or regulation 8(8); or
- (c) a decision of an authorised officer to serve a remedial action notice,

may appeal to a court of summary jurisdiction.

(2) The procedure on an appeal to a court of summary jurisdiction under paragraph (1) shall be by way of notice under Part VII of the Magistrates Courts (Northern Ireland) Order 1981(9).

(3) The period within which an appeal under paragraph (1) may be brought shall be—

- (a) one month from and including the date on which notice of the decision was served on the person desiring to appeal; or
- (b) in the case of an appeal against a decision to issue a hygiene improvement notice, the period specified in sub-paragraph (a) or, if it is shorter, the period specified in the notice pursuant to regulation 6(1)(d),

and the making of a complaint for an order shall be deemed for the purposes of this paragraph to be the bringing of the appeal.

### **Appeals to County Court**

**20.** A person who is aggrieved by—

- (a) the dismissal by a court of summary jurisdiction of an appeal to it under regulation 19(1); or
- (b) any decision of such a court to make a hygiene prohibition order or a hygiene emergency prohibition order,

may appeal to the County Court.

### **Appeals against hygiene improvement notices and remedial action notices**

**21.**—(1) On an appeal against a hygiene improvement notice or a remedial action notice, the court may 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 any period specified in a hygiene improvement notice pursuant to regulation 6(1)(d) would otherwise include any day on which an appeal against that notice is pending, that day shall be excluded from that period.

(3) Any appeal shall be regarded as pending for the purposes of paragraph (2) until it is finally disposed of, is withdrawn or is struck out for want of prosecution.

## **PART 4**

### **MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS**

#### **Power to issue codes of recommended practice**

**22.**—(1) For the guidance of district councils, the Department may issue codes of recommended practice as regards the execution and enforcement of the Hygiene Regulations and any such code shall be laid before the Assembly after being issued.

(2) The Agency may, after consulting the Department, give a district council a direction requiring the council to take any specified steps in order to comply with a code issued under this regulation.

(3) In exercise of the functions conferred on district councils by or under the Hygiene Regulations, every district council—

(a) shall have regard to any relevant provision of any such code; and

(b) shall comply with any direction which is given under this regulation and requires the council to take any specified steps in order to comply with such a code.

(4) Any direction under paragraph (2) shall, on the application of the Agency, be enforceable by mandatory order.

(5) The Agency shall consult the Department before making an application under paragraph (4).

(6) Before issuing any code under this regulation, the Department shall have regard to any relevant advice given by the Agency.

#### **Protection of officers acting in good faith**

**23.**—(1) An officer of an enforcement authority is not personally liable in respect of any act done by him—

(a) in the execution or purported execution of the Hygiene Regulations; and

(b) within the scope of his employment,

if he did that act in the honest belief that his duty under the Hygiene Regulations required or entitled him to do it.

(2) Nothing in paragraph (1) shall be construed as relieving any enforcement authority of any liability in respect of the acts of their officers.

(3) Where an action has been brought against an officer of an enforcement authority in respect of an act done by him—

(a) in the execution or purported execution of the Hygiene Regulations; but

(b) outside the scope of his employment,

the authority may indemnify him against the whole or a part of any damages which he has been ordered to pay or any costs which he may have incurred if they are satisfied that he honestly believed that the act complained of was within the scope of his employment.

(4) A public analyst appointed by an enforcement authority shall be treated for the purposes of this regulation as being an officer of the council, whether or not his appointment is a whole-time one.

### **Revocation and suspension of designations and appointments**

24.—(1) Subject to paragraphs (2) and (3), the Agency may at any time revoke or suspend—

- (a) the appointment of an official veterinarian;
- (b) the designation of an approved veterinarian; or
- (c) the appointment of an official auxiliary,

if it appears to the Agency that the person in question is unfit to perform any of the functions of that post under the Hygiene Regulations.

(2) Where the Agency revokes or suspends a designation or appointment under paragraph (1), the Agency shall, as soon as practicable, give to the person whose designation or appointment has been revoked or suspended a notice in writing of the reasons for the revocation or suspension and shall afford him an opportunity of—

- (a) making representations in writing to the Agency with regard to the revocation or suspension; or
- (b) being heard by a person nominated by the Agency for the purpose pursuant to paragraph (5) (a).

(3) A notice given under paragraph (2) shall inform the person to whom it is given—

- (a) of his right to make representations in writing;
- (b) of the manner in which and the time (not being less than 21 days from and including the date of the giving of the notice) within which such representations may be made;
- (c) of his right to be heard; and
- (d) of the manner in which and the time (not being less than 21 days from and including the date of the giving of the notice) within which he may apply for an opportunity to be heard.

(4) In the event of the person whose designation or appointment has been revoked or suspended making any representations (whether orally or in writing) under paragraph (3) the Agency shall reconsider whether that person is unfit to perform any of the functions of the post held by him under the Hygiene Regulations and shall, as soon as practicable, reconsider its decision to revoke or suspend the designation or appointment under paragraph (1) in the light of those representations.

(5) Where a person requests the opportunity to be heard pursuant to paragraph (2)(b)—

- (a) the Agency shall nominate a person to determine the matter from the list established under paragraph (6);
- (b) the person so nominated shall serve a notice on the person requesting the opportunity to be heard and the Agency informing them of the time (not being less than 21 days from and including the date of the giving of the notice) of the hearing; and
- (c) the person so nominated shall, within 21 days of and including the date of the hearing, notify the person requesting the opportunity to be heard and the Agency of his decision.

(6) The Agency shall establish and maintain a list of people who may be nominated for the purposes of this regulation and shall consult those organisations appearing to it to represent official veterinarians, approved veterinarians and official auxiliaries before including any person on the list.

### **Food which has not been produced, processed or distributed in accordance with the Hygiene Regulations**

25.—(1) On an inspection of any food, an authorised officer may certify that it has not been produced, processed or distributed in compliance with the Hygiene Regulations.

(2) Where any food is certified as mentioned in paragraph (1) it shall be treated for the purposes of Article 8 of the Order as failing to comply with food safety requirements.

(3) Where any food certified as mentioned in paragraph (1) is part of a batch, lot or consignment of food of the same class or description, all the food in the batch, lot or consignment shall, until it is proved that it has been produced, processed or distributed in compliance with the Hygiene Regulations, be treated for the purposes of paragraph (2) as having been so certified.

### **Bulk transport in sea-going vessels of liquid oils or fats and the bulk transport by sea of raw sugar**

26. Schedule 3 (bulk transport in sea-going vessels of liquid oils or fats and the bulk transport by sea of raw sugar) shall have effect.

### **Temperature control requirements**

27. Schedule 4 (temperature control requirements) shall have effect.

### **Direct supply by the producer of small quantities of meat from poultry or lagomorphs slaughtered on the farm**

28. Schedule 5 (direct supply by the producer of small quantities of meat from poultry or lagomorphs slaughtered on the farm) shall have effect.

### **Restrictions on the sale of raw milk intended for direct human consumption**

29. Schedule 6 (restrictions on the sale of raw milk intended for direct human consumption) shall have effect.

### **Consequential amendments**

30. The statutory rules specified in Schedule 7 are amended to the extent specified there.

### **Revocations**

31. The Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations (Northern Ireland) 1995<sup>(10)</sup>; and the Food Hygiene Regulations (Northern Ireland) 2005<sup>(11)</sup> are hereby revoked.

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<sup>(10)</sup> S.R. 1995 No. 396, as amended by S.R. 1997 No. 496, S.R. 1998 No. 237, S.R. 2000 Nos. 78, 191 and 287, S.R. 2001 No. 429, S.R. 2002 No. 217 and S.R. 2005 No. 35

<sup>(11)</sup> S.R. 2005 No. 356

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 10th January 2006.

L.S.

*Don Hill*  
A senior officer of the  
Department of Health, Social Services and  
Public Safety