Food Act 1984

1984 CHAPTER 30

PART VI

ADMINISTRATION, ENFORCEMENT AND LEGAL PROCEEDINGS

Administration

71 Food and drugs authorities

The food and drugs authority shall continue to be—

(a) in England, for each county and London borough, the council of that county or borough, and for the City of London and the Inner Temple and the Middle Temple, the Common Council of the City of London ;

(b) in Wales, the county council.

72 Local authorities for purposes of this Act

In this Act, except in sections 44 and 45, "local authority" means—

(a) as respects the City of London, the Common Council;

(b) as respects the Inner Temple and the Middle Temple, the Sub-Treasurer and the Under Treasurer respectively ; and

(c) as respects any district or London borough, the council of the district or borough.

73 Meaning of "authorised officer"

(1) "Authorised officer", where used in this Act in relation to a council—

(a) means an officer of the council authorised by them in writing, either generally or specially, to act in matters of any specified kind or in any specified matter ; and

(b) for the purposes of any provision of this Act relating to the taking of samples, includes a police constable so authorised with the approval of the police authority concerned.

(2) No officer of a council shall be authorised under this Act to act in relation to the examination and seizure of meat unless he is a person having such qualifications as may be prescribed by regulations made by the Ministers.

74 Duty to enforce

(1) The Minister shall enforce and execute the provisions of the sections, orders and regulations specified in paragraph 1 of Schedule 6, and the food and drugs authorities shall enforce and execute the provisions of the sections and regulations specified in paragraph 2 of that Schedule.

(2) It is the duty of every local authority to enforce and execute in their district the provisions of any section of this Act with respect to which the duty is not expressly, or by necessary implication, imposed on some other authority.

(3) Regulations made under Part I, Milk and Dairies Regulations and Milk (Special Designation) Regulations shall specify the authorities by whom they are to be enforced and executed, being—

(a) in the case of regulations made under Part I, county councils, local authorities, food and drugs authorities, port health authorities, or the Commissioners of Customs and Excise,

(b) in the case of Milk and Dairies Regulations and Milk (Special Designation) Regulations, county councils, local authorities, food and drugs authorities, or port health authorities,

and any regulations to which this subsection applies may provide for the giving of assistance and information, by any authority concerned in the administration of the regulations, .or of this Act, to any other authority so concerned, for the purposes of their respective duties under them.

This subsection does not apply to the enforcement and execution of so much of any regulations made under Part II as is, by virtue of subsection (1), enforceable by the Minister.

(4) Subsection (3) applies to Northern Ireland so far as it relates—

(a) to those regulations and orders made under Part I which apply to Northern Ireland ; and

(b) to the enforcement and execution of those regulations and orders,

and accordingly that subsection is modified—

(i) by the substitution in paragraph (a) of the words " district councils " for " county councils, local authorities, food and drugs authorities, port health authorities "; and

(ii) by the construction of the reference to any authority concerned in the administration of this Act as a reference to any authority concerned in the administration of any corresponding Northern Ireland enactment.

75 Joint boards

An order made by the Secretary of State under section 6 of the Public Health Act 1936 may constitute a united district for the purposes of any functions under this Act which are functions of a local authority, whether as a food and drugs authority or otherwise.

Sampling and analysis

76 Public analysts

(1) Every food and drugs authority shall appoint in accordance with this section one or more persons (in this Act called " public analysts") to be analysts of food and drugs within their area.

(2) No person shall be appointed a public analyst unless he possesses either—
  (a) the qualifications prescribed by regulations made by the Ministers, or
  (b) such other qualifications as the Ministers may approve,

and no person shall be appointed public analyst for any area who is engaged directly or indirectly in any trade or business connected with the sale of food or drugs in that area.

(3) A food and drugs authority shall pay to a public analyst such remuneration as may be agreed, which may be expressed to be payable either—
  (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 authority.

(4) A food and drugs authority who appoint 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—
  (a) the provisions of this section with respect to the qualifications, appointment, removal and remuneration of a public analyst shall apply also in relation to a deputy public analyst; and
  (b) any reference in the following provisions of this Act to a public analyst shall be construed as including a reference to a deputy public analyst appointed under this subsection.

77 Facilities for examination

A county council or local authority may provide facilities for bacteriological and other examinations of samples of food and drugs.

78 Powers of sampling

(1) An authorised officer of a council may exercise such powers of procuring samples for analysis, or for bacteriological or other examination, as are conferred upon him by this section, and any such officer is in this Act called a " sampling officer ".

(2) A sampling officer may purchase samples of any food or of any substance capable of being used in the preparation of food.

(3) A sampling officer may take a sample of any food, or of any substance capable of being used in the preparation of food, which—

(a) appears to him to be intended for sale, or to have been sold, for human consumption ; or

(b) is found by him on or in any premises, stall, vehicle, ship, aircraft or place which he is authorised to enter for the purposes of the execution of this Act

(4) Without prejudice to subsection (3), a sampling officer—

(a) may take a sample of milk while at any dairy, or while deposited for collection, or at any time before it is delivered to a consumer in pursuance of a sale by retail;

(b) may, at the request of a person to whom any food or substance is, or is to be, delivered in pursuance of a contract of sale, take a sample of that food or substance in the course of delivery, or at the place of delivery.

(5) A sampling officer who under this section takes a sample of the milk of any cows at a dairy may take such steps at the dairy as may be necessary to satisfy himself that the sample is a fair sample of the milk of the cows when properly and fully milked.

(6) Except as provided by subsection (4), or with the purchaser's consent, a sampling officer shall hot take a sample of any food or substance which appears to him to have been sold by retail, either—

(a) while the food or substance is in the course of delivery to the purchaser, or

(b) at any time after such delivery,

and nothing in this section shall authorise a sampling officer to take a sample of any food or substance in a ship (not being a home-going ship) or in any aircraft, other than food imported as part of the cargo of that ship or aircraft.

(7) The powers of taking samples of milk which are conferred on a sampling officer by subsections (3) to (6) shall be exercisable throughout any county by an authorised officer of the county council, whether or not the council is the food and drugs authority for the whole county.

(8) Any power of an authorised officer in respect of procuring samples of milk may be exercised at a place outside the area of the council whose officer he is, if the food and drugs authority of the area within which that place is situated have consented to samples of milk being procured within their areas by officers of the first-mentioned council, and, for the purposes of this Act, any samples so procured shall be deemed to have been procured within the area for which the officer in question acts.

A food and drugs authority shall not unreasonably withhold their consent for the purposes of this subsection; and any question whether or not such consent is unreasonably withheld shall be referred to and determined by the Secretary of State.

79 Right to have samples analysed

(1) If a sampling officer who has procured a sample of any food or substance considers that it should be analysed, he shall submit it to be analysed by the public analyst for the area in which the sample was, or is deemed to have been, procured.

(2) A person, other than a sampling officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it to be analysed by the public analyst for the area in which the purchase was made.

(3) The public analyst shall analyse as soon as practicable any sample submitted to him in pursuance of this section, but may, in the case of a sample submitted by a person

not being an officer of the food and drugs authority, demand in advance the payment of such fee as may be fixed by the authority.

(4) If—

(a) the office of public analyst for the area in question is vacant, or

(b) the public analyst determines that he is for any reason unable to perform an effective analysis, the sample shall be submitted or, as the case may be, sent by the public analyst to whom it was originally submitted, to the public analyst for some other area, and he shall, upon payment to him of such sum as may be agreed, analyse the sample.

(5) A public analyst who has analysed a sample shall give to the person by whom it was originally submitted a certificate specifying the result of the analysis ; and any such certificate shall be in a form prescribed by regulations made by the Ministers.

(6) Any certificate of the results of an analysis given by a public analyst in pursuance of this section shall be signed by the public analyst, but the analysis may be made by any person acting under the direction of the analyst.

80 Samples taken for analysis

(1) A sampling officer who purchases or takes a sample of any food or substance for the purpose of analysis by a public analyst shall deal with the sample in accordance with Part I of Schedule 7.

(2) Part I of that Schedule applies to the purchase of samples by any person who is neither a sampling officer nor a person having the powers of a sampling officer as it applies in relation to the purchase of samples by a sampling officer; and references in that Part to a sampling officer shall be construed accordingly.

(3) If it appears to a sampling officer that any food or substance, of which he has procured a sample for the purpose of analysis by a public analyst, was manufactured or put into its wrapper or container by a person (not being a person to whom one part of the sample is required to be given under Part I of Schedule 7) having his name and an address in the United Kingdom displayed on the wrapper or container, the officer shall, unless he decides not to have an analysis made, within three days of procuring the sample send to that person a notice informing him—

(a) that the sample has been procured by the officer; and

(b) where the sample was taken or, as the case may be, from whom it was purchased.

(4) Where a sample taken or purchased by a sampling officer has been analysed by a public analyst, any person to whom a part of the sample was given under Part I of Schedule 7 shall be entitled, on payment to the authority by whose officer the sample was procured of a fee of 5p to be supplied with a copy of the certificate given by the public analyst under section 79(5).

81 Sampling of milk

(1) The provisions of this Act relating—

(a) to the procuring of samples by a sampling officer, and

(b) to connected proceedings,

have in relation to milk effect subject to Part II of Schedule 7.

(2) Where milk sold or exposed for sale within the area of any council is obtained from a dairy outside that area—

(a) the proper officer or any other authorised officer of the council may by written notice to the proper officer or other authorised officer of a food and drugs authority within whose area the dairy is situated, or through whose area the milk is transported, request him to procure samples of the milk, and

(b) it is the duty of an officer who receives such a notice to procure, as soon as is practicable, samples of the milk in question and to forward those samples to the officer who gave the notice, or to such person as that officer may direct,

and for the purposes of this Act samples so procured shall be deemed to have been procured within the area for which the officer who gave the notice acts.

(3) So much of any contract as requires a purveyor of milk, on a sample of milk being procured under this Act—

(a) to send to the person from whom he obtained the milk any part of that sample, or

(b) to give to that person notice that a sample has been so procured,

shall be void.

(4) It is a defence for a person charged with an offence under this Act, or regulations made under this Act, in respect of a sample of milk taken after the milk has left his possession, to prove—

(a) that the churn or other vessel in which the milk was contained was effectively closed and sealed at the time when it left his possession ; and

(b) that it had been opened before the person by whom the sample was taken had access to it.

82 Sampling powers of Minister's inspectors

The powers of sampling officers to take samples under section 78 may be exercised also, in relation to milk—

(a) in any case, by an inspector of the Minister, and

(b) for purposes connected with the enforcement of any provisions which, by virtue of section 74, are enforceable by the Minister, by an authorised officer of his,

and references to a sampling officer in section 78(6), in section 80, and in Part I of Schedule 7, shall be construed accordingly.

83 Minister's power of direction

(1) The Minister may, in relation to any matter appearing to him to affect the general interests of consumers or the general interests of agriculture in the United Kingdom, direct an officer of his department to procure samples of any specified food, and upon that direction the officer shall have all the powers of a sampling officer, and this Act shall apply as if he were a sampling officer, except that—

(a) if he intends to submit any sample procured by him to be analysed, he shall divide it into four parts, and shall deal with three of those parts in the manner directed by Part I of Schedule 7, and send the fourth part to the Minister; and

(b) any fee for analysis shall be payable to the analyst by the food and drugs authority of the area in which the sample is procured.

(2) The Minister shall communicate the result of the analysis of any such sample to the food and drugs authority, and upon that communication the authority shall have the like duty to cause proceedings to be taken as if one of their officers had procured the sample and sent it to be analysed.

84 Where division not practicable

Where a person procures a sample consisting of a food or substance contained in unopened containers, and the division into parts of the food or substance contained in those containers—

(a) is not reasonably practicable, or

(b) might affect the composition, or impede the proper analysis, of the contents,

the provisions of Part I of Schedule 7, or of section 83, as the case may be, with respect to the division of samples into parts shall be deemed to be complied with if the person procuring the sample divides the containers into the requisite number of lots and deals with each lot as if it were a part in the manner provided by those provisions; and references in this Act to a part of a sample shall be construed accordingly.

85 Examination of food not for sale

A local authority may, at the request of a person who has in his possession any food which has not been sold and is not intended for sale, and on payment by that person of such fee, if any, as may be fixed by the-authority, arrange to have the food examined.

86 Quarterly reports of analysts

Every public analyst shall, as soon as may be after the last day of March, of June, of September and of December in every year, report to the authority by whom he was appointed the number of articles which have been analysed by him under this Act in his capacity of public analyst for their area during the preceding quarter of a year and the result of each analysis.

Enforcement

87 Power to enter premises

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

(a) for the purpose of ascertaining whether there is or has been on, or in connection with, the premises any contravention of the provisions of this Act or of any regulations or byelaws made under it, being provisions which the council are required or empowered to enforce, and

(b) generally for the purpose of the performance by the council of their functions under this Act or any such regulations or byelaws,

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

(2) If a justice of the peace, on sworn information in writing—

(a) is satisfied that there is reasonable ground for entry into any premises for any such purpose as is mentioned above, and

(b) is also satisfied either—

(i) 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

(ii) 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 council by any authorised officer to enter the premises, if need be by force.

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

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

(5) If any person who, in compliance with this section, or of a warrant issued under it, is admitted into a factory or workplace discloses to any person any information obtained by him in the factory or workplace with regard to any manufacturing process or trade secret, he shall, unless the disclosure was made in the performance of his duty, be liable to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding three months.

(6) Nothing in this section authorises any person, except with the permission of the local authority under the Animal Health Act 1981, to enter any cowshed or other place—

(a) in which an animal affected with any disease to which that Act applies is kept; and

(b) which is situated in a place declared under that Act to be infected with such a disease.

88 Additional power of entry

(1) An authorised officer of a 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 ship or aircraft for the purpose of ascertaining whether there is in the ship or aircraft any food imported as part of the cargo in contravention of the provisions of regulations made under Part I, being provisions which the council are required or empowered to enforce ; and

(b) to enter any vehicle, stall or place other than premises, or any home-going ship, for any purpose for which he is empowered under section 87 to enter premises.

(2) Subsections (2), (3) and (4) of section 87 apply in relation to any ship, aircraft, vehicle, stall or place which may be entered under the powers conferred by subsection (1) of this section as they apply in relation to premises, and as if any reference to the occupier of premises were a reference to the master, commander or other person in charge of the ship, aircraft, vehicle, stall or place.

89 Powers of entry of Ministers' officers

(1) An inspector or authorised officer of the Minister and an authorised officer of the Secretary of State, for the purpose of ascertaining whether there is or has been any contravention of the provisions of this Act or of any regulations or order made under it, being provisions which the Minister in question is required or empowered to enforce—

(a) shall have the powers of entry specified in subsection (2); and

(b) an inspector or authorised officer of the Minister shall have those powers for the purpose of taking any sample of milk under section 82.

(2) The powers of entry referred to in subsection (1) are the like powers of entry as are exercisable under section 87 or section 88 by an authorised officer of a council; and in relation to an inspector or officer to whom the subsection applies, the reference in section 87(2) to the council shall be construed as a reference to the Minister or the Secretary of State, as the case may be.

(3) For the purposes of any regulations made under section 13, this section and section 91(1) and (3) have effect as if the Minister as well as the local authority were empowered to enforce those regulations so far as they apply to slaughterhouses and knackers' yards.

90 Movement of imported food

(1) Without prejudice to any power of examining food which may be conferred by regulations made under Part I, an authorised officer of a port health authority into whose district any food has been imported with a view to sale for human consumption may give directions to the person in possession of the food prohibiting or restricting its removal or delivery—

(a) during any period not exceeding 48 hours; and

(b) if within that period the officer so requires, until that person has notified the officer of the name of the person to whom, and the address to or at which, he proposes to send or deliver the food.

(2) The power conferred by subsection (1) on an authorised officer of a port health authority is exercisable also, in relation to an area not forming part of a port health district, by an authorised officer of a local authority or county council.

(3) A person who fails to comply with any direction given under subsection (1), or who in a notification under it knowingly makes any misstatement, is guilty of an offence.

91 Obstruction

(1) A person who wilfully obstructs any person acting in the execution of this Act, or of any regulation, byelaw, order or warrant made or issued under it, is liable to a fine not exceeding level 5 on the standard scale.

(2) If—

(a) a sampling officer applies to purchase, any food or substance exposed for sale, or on sale by retail, and tenders the price for the quantity which he requires as a sample, and the person exposing the food or substance for sale, or having it for sale, refuses to bring the officer such quantity of it as mentioned above ; or

(b) the seller or consignor of any article or substance of which an officer has power to take a sample, or a person having the charge for the time being of

such an article or substance, refuses to allow the officer to take the quantity which he requires as a sample,

then, in any of the cases mentioned in those paragraphs, the person concerned shall be treated for the purposes of subsection (1) as having wilfully obstructed the officer; but where any food or substance is exposed for sale in an unopened container duly labelled, no person shall be required to sell it except in the unopened container in which it is contained.

(3) A person who—

(a) fails to give to any person acting in the execution of this Act, or of any regulation, byelaw, order or warrant made or issued under it, any assistance which that person may reasonably request him to give, or

(b) fails to give any information which that person is expressly authorised by this Act to call for or may reasonably require, or

(c) when required to give any such information, knowingly makes any misstatement in respect of it,

is liable to a fine not exceeding level 5 on the standard scale, except that nothing in this subsection shall—

(i) apply to section 90(3);

(ii) be construed as requiring a person to answer any question or give any information if to do so might incriminate him.

(4) Subsection (3) is without prejudice to so much of section 118 as enables regulations made under this Act, or an order made under section 5, to contain provisions for imposing penalties on persons offending against the regulations or order.

Legal proceedings

92 Offences triable either way

(1) A person guilty of an offence to which this section applies is liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

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

(2) This section applies to any offence under this Act, except an offence—

(a) under section 65, or

(b) under any provision of this Act specified in section 93(3),

but in the case of an offence under section 5(3) the liability under paragraph (a) of subsection (1) of this section includes a term of imprisonment not exceeding 3 months, or both such a term and the fine mentioned in that paragraph.

93 Summary offences

(1) Any offence to which this section applies is triable summarily.

(2) The offences to which this section applies are—

(a) an offence under any provision of this Act specified in subsection (3);

(b) an offence under regulations made under this Act other than an offence which by virtue of the regulations is triable either summarily or on indictment;

(c) an offence under byelaws made under this Act;

(d) an offence under an order made under section 5.

(3) The provisions of this Act mentioned in paragraph (a) of subsection (2) are—
(a) section 18(4);
(b) section 27(1).;
(c) section 28(1);
(d) section 28(3);
(e) section 31(1);
(f) section 53(4);
(g) section 56(1);
(h) section 58;
(j) section 87(5);
(k) section 91(1); and
(l) section 91(3).

(4) This section applies to Northern Ireland so far as it relates to those regulations and orders made under Part I which apply to Northern Ireland, and to the enforcement and execution of those regulations and orders.

94 Offences by corporations

(1) Where an offence under this Act, or any regulations or order made under this Act, 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 subsection (1) " 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.

95 Prosecutions

(1) No prosecution for an offence under this Act or regulations made under this Act which is triable either summarily or on indictment 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 prosecutor,
whichever is the earlier.

(2) Where a sample has been procured under this Act, no prosecution in respect of the article or substance sampled shall be begun after the expiry of—
(a) 28 days, in the case of a sample of milk,
(b) two months, in any other case,
beginning with the date on which the sample was procured.

(3) Subsection (2) does not apply where the justice of the peace before whom the information is laid certifies that he is satisfied on oath that having regard to the circumstances of the particular case it was not practicable to lay the information at an earlier date; but a prosecution in respect of a sample of milk shall not in any case be begun after the expiry of 42 days beginning with the date on which the sample was procured.

(4) Where a sample has been procured under this Act, any proceedings in respect of the article or substance sampled shall be taken before a court having jurisdiction in the place where the sample was procured; but—

(a) where a sample procured within one area is for the purposes of this Act deemed to have been procured within another area, proceedings may, at the prosecutor's option, be taken either before a court having jurisdiction in the area within which the sample was procured, or before a court having jurisdiction in the area within which it is deemed to have been procured ; and

(b) where the article or substance sampled was sold and actually delivered to the purchaser, proceedings may, if the prosecutor so elects, be taken before a court having jurisdiction at the place of delivery.

(5) In any proceedings under this Act in respect of an article or substance sampled—

(a) the summons shall not be made returnable less than 14 days from the day on which it is served ; and

(b) a copy of any certificate of analysis obtained on behalf of the prosecutor, and of any certificate given by a justice under subsection (3), shall be served with the summons.

(6) In any proceedings under this Act, where a sample has been procured in such circumstances that its division into parts is required by this Act, the part of the sample retained by the person who procured it shall be produced at the hearing.

(7) Any regulations or order made under this Act and extending to Northern Ireland shall provide for applying, in relation to offences under them, the provisions—

(a) of this section, or

(b) of any corresponding Northern Ireland enactment,

subject to any such modifications or adaptations as may be specified in the regulations or order.

(8) Notwithstanding subsection (1), a person is not liable to be prosecuted for an offence under this Act or regulations made under this Act which was committed before 1st January 1983.

96 Proceedings by Government departments and councils

(1) Without prejudice to their powers of enforcement under any provision of this Act—

(a) the authorities specified in the first column of Schedule 8 may, where they are of opinion that the general interests of consumers are affected, institute proceedings for any of the offences specified in relation to them respectively in the second column of that Schedule; but.

(b) except as otherwise expressly provided by this Act, proceedings shall not be instituted by any of those authorities for an offence against any such provisions of this Act, or of any regulations made under it, which it is the duty of any council to execute and enforce.

(2) A food and drugs authority or a local authority may institute proceedings under any section of, or any regulations made under, this Act if, and only if, they are the authority charged with its execution and enforcement, except that a local authority may institute proceedings under section 2 if the offence alleged relates to food which is alleged to contain some extraneous matter.

97 Evidence of analysis

(1) In any proceedings under this Act, the production by one of the parties—

(a) of a document purporting to be a certificate of a public analyst in the form prescribed under section 79(5), 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 the first-mentioned case, the other party requires that the analyst shall be called as a witness.

(2) In any such proceedings, if a sample of milk has been taken by an officer of one authority at the request of an officer of another authority, a document—

(a) which purports to be a certificate signed by the officer who took the sample, and

(b) which states that the provisions of this Act with respect to the manner in which samples are to be dealt with were complied with,

shall, if a copy of it has been served on the defendant with the summons, be sufficient evidence of compliance with those provisions, unless the defendant requires that the officer shall be called as a witness.

(3) In any such proceedings, if a defendant intends—

(a) to produce a certificate of a public analyst, or

(b) under subsection (1), to require that a public analyst shall be called as a witness, or

(c) under subsection (2), to require that a sampling officer shall be called as a witness,

notice of his intention, together, in the first-mentioned case, with a copy of the certificate, shall be given to the other party at least three clear days before the day on which the summons is returnable, and, if this requirement is not complied with, the court may, if it thinks fit, adjourn the hearing on such terms as it thinks proper.

(4) Regulations made under section 4 or section 7 may prescribe a method of analysis for the purpose of ascertaining the presence in, or absence from, any food of any substance specified in the regulations, or the quantity of any such substance which is present in any food; and in any proceedings under this Act—

(a) for a contravention of any regulations made under either of those sections, or

(b) for an offence under section 2 or section 6,

in respect of any food alleged to contain, or not to contain, any substance specified as mentioned above, or any particular quantity of such a substance, evidence of an analysis carried out by the prescribed method shall be preferred to evidence of any other analysis or test

(5) Subsection (4) applies to Northern Ireland so far as it relates—

(a) to those regulations and orders made under Part I which apply to Northern Ireland, and

(b) to the enforcement and execution of those regulations and orders,

and accordingly that subsection is modified by the omission of the words " under this Act " and paragraph (b).

98 Presumptions

For the purposes of this Act and of any regulations or byelaws made under this Act—

(a) any article commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale, for human consumption ;

(b) any article commonly used for human consumption which is found on premises used for the preparation, storage, or sale of that article and any article commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption ;

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

99 Analysis by Government Chemist

(1) The court before which any proceedings are taken under this Act may, if it thinks fit, and upon the request of either party shall, cause the part of any sample produced before the court under section 95(6) to be sent to the Government Chemist, who shall—

(a) make an analysis, and

(b) transmit to the court a certificate of its result,

and the costs of the analysis shall be paid by the prosecutor or the defendant as the court may order.

(2) If, in a case where an appeal is brought, no action has been taken under subsection (1), its provisions shall apply also in relation to the court by which the appeal is heard.

(3) Any certificate of the results of an analysis transmitted by the Government Chemist under this section shall be signed by or on behalf of the Government Chemist, but—

(a) the analysis may be made by any person acting under the direction of the person by whom the certificate is signed; and

(b) any certificate so transmitted by the Government Chemist shall be evidence of the facts stated in it unless any party to the proceedings requires that the person by whom it is signed shall be called as a witness.

100 Contravention due to another's default

(1) A person against whom proceedings are brought under this Act shall—

(a) upon information duly laid by him, and

(b) on giving to the prosecution not less than three clear days' notice of his intention,

be entitled to have any person to whose act or default he alleges that the contravention of the provisions in question was due brought before the court in the proceedings ; and—

(i) if, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence; and

(ii) if the original defendant further proves that he has used all due diligence to secure that the provisions in question were complied with, he shall be acquitted of the offence.

(2) Where a defendant seeks to avail himself of the provisions of subsection (1)—

(a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence;

(b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to them.

(3) Where—

(a) it appears to the authority concerned that an offence has been committed in respect of which proceedings might be taken under this Act against some person, and

(b) the authority are reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the first-mentioned person could establish a defence under subsection (1),

they may cause proceedings to be taken against that other person without first causing proceedings to be taken against the first-mentioned person.

In any such proceedings the defendant may be charged with, and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged.

101 Contravention in Scotland or Northern Ireland

(1) Where proceedings are brought against any person (" the defendant") in respect of a contravention of any provision of this Act, or of regulations made under this Act, and it is proved—

(a) that the contravention was due to the act or default of some other person, being an act or default which took place in Scotland or Northern Ireland, and

(b) that the defendant used all due diligence to secure compliance with those provisions,

the defendant shall, subject to subsection (2), be acquitted of the offence.

(2) The defendant shall not be entitled to be acquitted under this section unless within seven days from the date of the service of the summons on him he has given written notice to the prosecution of his intention to rely upon the provisions of this section, specifying the name and address of the person to whose act or default he alleges that the contravention was due, and has sent a like notice to that person.

(3) The person specified in a notice served under this section shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(4) Where it is proved that the contravention of the provisions in question was due to the act or default of some person other than the defendant, being an act or default which took place in Scotland or Northern Ireland, the court shall (whether or not the defendant is acquitted) cause notice of the proceedings to be sent to the Minister.

102 Warranty pleaded as defence

(1) In any proceedings for an offence under this Act, or any regulations made under this Act, being an offence consisting of selling, or offering, exposing or advertising for sale, or having in possession for the purpose of sale, any article or substance, it is a defence for the defendant to prove—

(a) that he purchased it as being an article or substance which could lawfully be sold or otherwise dealt with as mentioned above, or, as the case may, be, could lawfully be so sold or dealt with under the name or description or for the purpose under or for which he sold or dealt with it, and with a written warranty to that effect; and

(b) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise; and

(c) that it was then in the same state as when he purchased it

(2) A warranty is only a defence in proceedings under this Act if—

(a) the defendant—

(i) has, not later than three clear days before the date of the hearing, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it and

(ii) has also sent a like notice of his intention to that person, and

(b) in the case of a warranty given by a person resident out side the United Kingdom, the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in it and

(c) in the case of a prosecution in respect of a sample of milk procured from him, the defendant either—

(i) has within 60 hours after the sample was procured served such a notice as is mentioned in paragraph 12 of Schedule 7, or

(ii) not having served such a notice, proves that he had reasonable cause to believe that such a notice would have been of no effect by reason of the fact that the milk in question was a mixture of milk produced on more than one dairy farm.

(3) Where the defendant is a servant of the person who purchased the article or substance under a warranty, he shall be entitled to rely on the provisions of this section in the same way as his employer would have been entitled to do if he had been the defendant

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit adjourn the hearing to enable him to do so.

(5) For the purposes of this section and section 103, a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that name or description by any person without contravening any of the provisions of this Act or of regulations made under this Act

103 Offences as to warranties and analysis certificates

(1) A defendant who in any proceedings under this Act wilfully applies to any article or substance a warranty or certificate of analysis given in relation to any other article or substance is guilty of an offence.

(2) A person who—

(a) sells an article or substance in respect of which a warranty might be pleaded under section 102, and

(b) gives to the purchaser a false warranty in writing in respect of that article or substance,

is guilty of an offence, unless he proves that when he gave the warranty he had reason to believe that the statements or description contained in it were accurate.

(3) Where the defendant in a prosecution under this Act relies successfully on a warranty given to him or to his employer, any proceedings under subsection (2) in respect of the warranty may at the prosecutor's option be taken either—

(a) before a court having jurisdiction in the place where a sample of the article or substance to which the warranty relates was procured; or

(b) before a court having jurisdiction in the place where the warranty was given.

Appeals

104 Appeals to magistrates' courts

(1) Where this Act or any regulations made under this Act provide for an appeal to a magistrates' court against a refusal or other decision of an authority, the procedure shall be by way of complaint for an order, and the Magistrates' Courts Act 1980 applies to the proceedings.

(2) The time within which such an appeal may be brought shall be 21 days from the date on which notice of the authority's refusal or other decision was served upon the person desiring to appeal, and for the purposes of this subsection the making of the complaint shall be deemed to be the bringing of the appeal.

(3) In any case where such an appeal lies, the document notifying to the person concerned the authority's decision in the matter shall state—

(a) the right of appeal to a magistrates' court; and

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

105 Further appeal to Crown Court

Where a person aggrieved by an order, determination or other decision of a magistrates' court under this Act, or under any regulation made under this Act, is not by any other enactment authorised to appeal to the Crown Court, he may appeal to such a court

106 Effect of court's decision

Where on an appeal under this Act, or under any regulations made under this Act, a court varies or reverses any decision of an authority, it is the authority's duty—

(a) to give effect to the court's order; and

(b) in particular, to grant any necessary licence and to make any necessary entry in any register.

107 Carrying on business pending appeal

(1) Where a decision of an authority under this Act, or under any regulations made under this Act, refusing, cancelling, suspending or revoking, registration or a licence, or a decision of a magistrates' court on appeal against such a decision, makes it unlawful for a person—

(a) to carry on any business which he, or his immediate predecessor in the business, was lawfully carrying on at the date when the decision of the authority was given, or

(b) to use any premises for any purpose for which he, or his immediate predecessor in the business, was lawfully using them at that date,

he may carry on that business and use those premises for that purpose until the time for appealing has expired and, if an appeal is lodged, until the appeal is finally disposed of or abandoned or has failed for want of prosecution.

(2) The provisions of subsection (1) with respect to the right to continue to carry on a business and to use premises shall apply also where the decision of a court in proceedings in respect of an offence under this Act, or under any regulations made under this Act, makes it unlawful for a person—

(a) to carry on a business which he was lawfully carrying on immediately before the decision was given; or

(b) to use any premises for any purpose for which he was then lawfully using them.

Compensation and arbitration

108 Disputes as to compensation under Part I

Where by Part I, except section 23, provision is made for the payment of compensation—

(a) if the compensation claimed does not exceed £50, all questions as to the fact of damage or loss, and liability for and the amount of compensation, may on the application of either party be determined by, and any compensation awarded may be recovered before, a magistrates' court;

(b) in any other case, a dispute arising as to the fact of damage or loss, or as to the amount of compensation, shall be determined by arbitration under this Act.

109 Arbitration

In arbitrations under this Act the reference shall, except where otherwise expressly provided, be to a single arbitrator to be appointed by agreement between the parties, or, in default of agreement—

(a) in relation to arbitrations under section 9(4) in respect of milk, or in respect of meat or meat products seized while in a slaughterhouse or in the course of importation, by the Minister;

(b) in relation to other arbitrations, by the Secretary of State.