



# Food Safety Act 1990

## 1990 CHAPTER 16

### PART IV

#### MISCELLANEOUS AND SUPPLEMENTAL

##### *Powers of Ministers*

#### **40 Power to issue codes of practice.**

- (1) For the guidance of food authorities, [<sup>F1</sup>the Secretary of State] may issue codes of recommended practice as regards the execution and enforcement of this Act and of regulations and orders made under it; and any such code shall be laid before Parliament [<sup>F2</sup>or in the case of a code which applies only to Scotland, before the Scottish Parliament] after being issued.
- [<sup>F3</sup>(1A) The Food Standards Agency may, after consulting the Secretary of State, give a food authority a direction requiring them to take any specified steps in order to comply with a code under this section.]
- (2) In the exercise of the functions conferred on them by or under this Act, every food authority—
- (a) shall have regard to any relevant provision of any such code; and
  - (b) shall comply with any direction which is given [<sup>F4</sup>under this section and] requires them to take any specified steps in order to comply with such a code.
- (3) Any direction under [<sup>F5</sup>subsection (1A)] above shall, on the application of [<sup>F6</sup>the Food Standards Agency], be enforceable by mandamus or, in Scotland, by an order of the Court of Session under section 45 of the <sup>M1</sup>Court of Session Act 1988.
- <sup>F7</sup>[(3A) The Food Standards Agency shall consult the Secretary of State before making an application under subsection (3) above.]
- (4) Before issuing any code under this section, [<sup>F1</sup>the Secretary of State] shall

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- (a) [<sup>F8</sup>subject to subsection (4B) below,]consult with such organisations as appear to <sup>F9</sup>. . . him to be representative of interests likely to be substantially affected by the code [<sup>F10</sup>; and.
- (b) have regard to any relevant advice given by the Food Standards Agency]

[<sup>F11</sup>(4A) If it appears to the Secretary of State that the Food Standards Agency has undertaken any consultation with an organisation that he is required to consult under subsection (4) above, the Secretary of State may treat that consultation as being as effective for the purposes of that subsection as if undertaken by him.]

[<sup>F12</sup>(4B) Subsection (4)(a) above shall not apply in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.]

- (5) Any consultation undertaken before the commencement of subsection (4) above shall be as effective, for the purposes of that subsection, as if undertaken after that commencement.

[<sup>F13</sup>(6) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.]

#### Textual Amendments

- F1** Words in s. 40(1)-(4) substituted (1.4.2000) by 1999 c. 28, s. 40(1), **Sch. 5 para. 8** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F2** Words in s. 40(1) inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 99**; S.I. 1998/3178, **arts. 1(2), 3**
- F3** S. 40(1A) inserted (1.4.2000) by 1999 c. 28, s. 40(1), **Sch. 5 para. 17(1)(2)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F4** Words in s. 40(2)(b) substituted (1.4.2000) by 1999 c. 28, s. 40(1), **Sch. 5 para. 17(1)(3)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F5** Words in s. 40(3) substituted (1.4.2000) by 1999 c. 28, s. 40(1), **Sch. 5 para. 17(1)(4)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F6** Words in s. 40(3) substituted (1.4.2000) by 1999 c. 28, s. 40(1), **Sch. 5 para. 17(1)(4)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F7** S. 40(3A) inserted (1.4.2000) by 1999 c. 28, s. 40(1), **Sch. 5 para. 17(1)(5)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F8** Words in s. 40(4)(a) inserted (7.12.2004) by Food Safety Act 1990 (Amendment) Regulations 2004 (S.I. 2004/2990), **regs. 1(1), 4(a)**
- F9** Words in s. 40(4) repealed (1.4.2000) by 1999 c. 28, s. 40(4), **Sch. 6** (with s. 38); S.I. 2000/1066, **art. 2**
- F10** Words in s. 40(4) inserted (1.4.2000) by 1999 c. 28, s. 40(1)(2), **Sch. 5 para. 17** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F11** S. 40(4A) inserted (1.4.2000) by 1999 c. 28, s. 40(1), **Sch. 5 para. 17(1)(5)** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F12** S. 40(4B) inserted (7.12.2004) by Food Safety Act 1990 (Amendment) Regulations 2004 (S.I. 2004/2990), **regs. 1(1), 4(b)**
- F13** S. 40(6) inserted (S.) (1.4.2015) by Food (Scotland) Act 2015 (asp 1), s. 63(2), **sch. para. 3(8)** (with s. 62); S.S.I. 2015/99, **art. 2**

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

- C1** S. 40 amended (1.4.2000) by 1999 c. 28, s. 18, **Sch. 3 Pt. I paras. 1, 4** (with s. 38); S.I. 2000/1066, **art. 2**
- C2** S. 40 applied (with modifications) (1.4.1995) by S.I. 1995/614, **reg. 11**

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- C3** S. 40 transfer of functions (23.3.2005) by Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849), art. 1, **Sch.** (with art. 6)
- C4** S. 40 power to apply in part for certain purposes conferred (S.) (1.4.2015) by Food (Scotland) Act 2015 (asp 1), **ss. 49(2)(c)(ix), 63(2)** (with s. 62); S.S.I. 2015/99, art. 2
- C5** S. 40 applied (with modifications) (S.) (30.6.2023) by The Food (Scotland) Act 2015 (Compliance Notices) Regulations 2023 (S.S.I. 2023/161), regs. 1(2), **3(c)**

#### Marginal Citations

- M1** 1988 c. 36.

## 41 Power to require returns.

[<sup>F14</sup>(1)] Every food authority shall send to [<sup>F15</sup>the Secretary of State][<sup>F16</sup>or to the Food Standards Agency]such reports and returns, and give him [<sup>F17</sup>or it] such information, with respect to the exercise of the functions conferred on them by or under this Act as he [<sup>F17</sup>or it] may require.

[<sup>F18</sup>(2) In the application of this section to Scotland, the references to the Food Standards Agency are to be read as references to Food Standards Scotland.]

#### Textual Amendments

- F14** S. 41(1): s. 41 renumbered as s. 41(1) (S.) (1.4.2015) by Food (Scotland) Act 2015 (asp 1), s. 63(2), **sch. para. 3(9)(a)** (with s. 62); S.S.I. 2015/99, art. 2
- F15** Words in s. 41 substituted (1.4.2000) by 1999 c. 28, s. 40(1), **Sch. 5 para. 7, 8** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F16** Words in s. 41 inserted (1.4.2000) by 1999 c. 28, s. 40(1), **Sch. 5 para. 18** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F17** Words in s. 41 inserted (1.4.2000) by 1999 c. 28, s. 40(1), **Sch. 5 para. 18** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F18** S. 41(2) inserted (S.) (1.4.2015) by Food (Scotland) Act 2015 (asp 1), s. 63(2), **sch. para. 3(9)(b)** (with s. 62); S.S.I. 2015/99, art. 2

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

- C6** S. 41 amended (1.4.2000) by 1999 c. 28, s. 18, **Sch. 3 Pt. I paras. 1, 5** (with s. 38); S.I. 2000/1066, **art. 2**
- C7** S. 41 transfer of functions (23.3.2005) by Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849), art. 1, **Sch.** (with art. 6)

## 42 Default powers.

- (1) Where [<sup>F19</sup>the Secretary of State] is satisfied that—
- a food authority (in this section referred to as “the authority in default”) have failed to discharge any duty imposed by or under this Act; and
  - the authority’s failure affects the general interests of consumers of food,
- he may by order empower another food authority [<sup>F20</sup>or the Food Standards Agency] (in this section referred to as “the substitute authority”), or [<sup>F21</sup>a person (whether or not an officer of his) who is authorised by him in writing to do so], to discharge that duty in place of the authority in default [<sup>F22</sup>but if regulations made by the Ministers so provide, no person shall be so authorised unless he has such qualifications as may be prescribed by the regulations.].

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- [<sup>F23</sup>(1A) In the application of subsection (1) to Scotland, the reference to the Food Standards Agency is to be read as a reference to Food Standards Scotland.]
- (2) For the purpose of determining whether the power conferred by subsection (1) above is exercisable, the Minister may cause a local inquiry to be held; and where he does so, the relevant provisions of the Local Government Act shall apply as if the inquiry were a local inquiry held under that Act.
- (3) Nothing in subsection (1) above affects any other power exercisable by the Minister with respect to defaults of local authorities.
- (4) The substitute authority or [<sup>F19</sup>the Secretary of State] may recover from the authority in default any expenses reasonably incurred by them or him under subsection (1) above; and for the purpose of paying any such amount the authority in default may—
- (a) raise money as if the expenses had been incurred directly by them as a local authority; and
  - (b) if and to the extent that they are authorised to do so by the Minister, borrow money in accordance with the statutory provisions relating to borrowing by a local authority.
- (5) In this section “the relevant provisions of the Local Government Act” means subsections (2) to (5) of section 250 of the <sup>M2</sup> Local Government Act 1972 in relation to England and Wales and subsections (3) to (8) of section 210 of the <sup>M3</sup> Local Government (Scotland) Act 1973 in relation to Scotland.

#### Textual Amendments

- F19** Words in s. 42(1)-(4) substituted (1.4.2000) by 1999 c. 28, s. 40(1), **Sch. 5 para. 8** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F20** Words in s. 42(1) inserted (1.4.2000) by 1999 c. 28, s. 40(1), **Sch. 5 para. 19** (with ss. 38, 40(2)); S.I. 2000/1066, **art. 2**
- F21** Words in s. 42(1) substituted (3.1.1995) by 1994 c. 40, ss. 76, 82(2)(f), **Sch. 16 para. 17(a)**
- F22** Words in s. 42(1) inserted (3.1.1995) by 1994 c. 40, ss. 76, 82(2)(f), **Sch. 16 para. 17(b)**
- F23** S. 42(1A) inserted (S.) (1.4.2015) by Food (Scotland) Act 2015 (asp 1), s. 63(2), **sch. para. 3(10)** (with s. 62); S.S.I. 2015/99, **art. 2**

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

- C8** S. 42 amended (1.4.2000) by 1999 c. 28, s. 18, Sch. 3 Pt. I paras. 1, **6** (with s. 38); S.I. 2000/1066, **art. 2**
- C9** S. 42 transfer of functions (23.3.2005) by Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849), art. 1, **Sch.** (with art. 6)

#### Marginal Citations

- M2** 1972 c. 70.
- M3** 1973 c. 65.

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**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- [s. 37\(2\)\(a\)](#) repealed by [2007 c. 15 Sch. 23 Pt. 1](#)