



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, [^{F1}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 [^{F2}or in the case of a code which applies only to Scotland, before the Scottish Parliament] after being issued.
- [^{F3}(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 [^{F4}under this section and] requires them to take any specified steps in order to comply with such a code.
- (3) Any direction under [^{F5}subsection (1A)] above shall, on the application of [^{F6}the Food Standards Agency], be enforceable by mandamus or, in Scotland, by an order of the Court of Session under section 45 of the ^{M1}Court of Session Act 1988.
- ^{F7}[(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, [^{F1}the Secretary of State] shall

Changes to legislation: Food Safety Act 1990, Section 40 is up to date with all changes known to be in force on or before 31 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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

[^{F11}(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.]

[^{F12}(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.

[^{F13}(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)**
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Marginal Citations

- M1** 1988 c. 36.

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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](#)