

# FOOD (SCOTLAND) ACT 2015

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## EXPLANATORY NOTES

### THE ACT

#### Part 2: Food and Feeding Stuffs

##### *Section 33: Food information*

33. **Section 33** inserts 4 new provisions into the 1990 Act. Section 15A defines “food information” as having the same meaning as the European definition contained in EU Regulation 1169/2011 on the provision of food information to consumers, and provides the Scottish Ministers with a power to define “food information law” by regulations. Giving this power to the Scottish Ministers builds in flexibility to be able to redefine food information law as and when new enactments are made in Scotland which relate to food information e.g. where the Scottish Ministers make regulations in future to give effect to requirements in EU law on food information.
34. Section 15B creates a new power for authorised officers to issue a notice to detain food which contravenes food information law – for example, where the description on the label does not match the content. This applies where it appears to an authorised officer (in the course of carrying out an inspection or otherwise) that food information law is being, or has been, contravened in relation to food intended for human consumption which is placed on the market within the meaning of EC Regulation 178/2002. A definition of “placing on the market” is contained in Article 3 of that Regulation. A notice can be given to a person in charge of the food or the owner of the food (if different and if known). It will be an offence for anyone to contravene a detention notice. The notice may require the food not to be removed from where it is or that it is not to be removed from a place specified in the notice. The officer must determine as soon as reasonably practicable and in any event within 21 days of the notice being issued whether or not food information law has been contravened, after which time the notice must be lifted. The officer may seize the food at any time and refer the case to the sheriff to determine if food information law has been contravened.
35. Where food is seized the authorised officer may copy or take away food information related to the food (including information held in electronic form). An authorised officer must inform the person in charge of the food of the officer’s intention to have the matter dealt with by the sheriff; the owner of the food (if different) must also be informed unless, after making reasonable inquiries, it is not possible to identify the owner. Anyone who might be prosecuted for breaching food information law in relation to the seized food is entitled to be heard and call witnesses if that person attends before the sheriff. If food information law has been breached, the sheriff has the discretion to have the food destroyed or disposed of or to require the information to be corrected so the food can be distributed for consumption; and the sheriff must require the owner of the food to meet any expenses reasonably incurred in connection with any disposal etc. of the food.
36. Where a detention notice is withdrawn by an authorised officer or where a sheriff refuses to make an order about the seized food (or any related food information), the

*These notes relate to the Food (Scotland) Act 2015 (asp  
1) which received Royal Assent on 13 January 2015*

food authority must pay the food owner compensation. The term “food authority” has the same meaning it does in section 5(2) of the 1990 Act and will usually be local authorities. Any dispute about the amount of compensation is to be determined by arbitration in accordance with the Arbitration (Scotland) Act 2010.

37. These arrangements are modelled on existing arrangements for food which is believed to contravene food safety requirements, which are contained in section 9 of the 1990 Act. This section will help guard against food which is mislabelled entering the food chain, as happened in the horse meat food fraud incidents in 2013.
38. Section 15C inserts a new duty on food business operators to inform FSS where food information law is or has been contravened, i.e. where a food business operator is in charge of any food intended for human consumption and that food has been placed on the market. A person who fails in this duty is guilty of an offence, and this is a new offence. “Food business operator” is to be construed in accordance with Article 3 of EC Regulation 178/2002.
39. Section 15D sets out a duty on food business operators who have informed FSS about contraventions of food information law to then provide such relevant information FSS reasonably requests. Failing to do so will be an offence.
40. In sections 15A to 15D reference to “food” means food as defined in section 53 of the Act by virtue of the amendments made to the 1990 Act by paragraph 2(2) of the schedule to the Act.