

FOOD (SCOTLAND) ACT 2015

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

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.

Section 34: Food hygiene information scheme

41. This section inserts provisions into section 16(1), and Schedule 1 to, the 1990 Act which allows the Scottish Ministers to establish by regulations a food hygiene information scheme. Section 16 (food safety and consumer protection) is the primary regulation-making power contained in the 1990 Act and is relied on to make many regulations in food law in Scotland, including on food hygiene. The new provisions inserted into Schedule 1 (provisions of regulations made under section 16(1)) elaborate on what the power to establish the scheme in section 16(1) can, in particular, be used to do. The intent is to make mandatory a food hygiene information scheme based on an existing Scottish voluntary scheme. The aim of the scheme is to improve hygiene standards and therefore make food safer for the consumer. The references to “food” in the amendments made here to the 1990 Act mean 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.

Section 35: Regulation of animal feeding stuffs

42. This section allows the Scottish Ministers to make regulations in relation to animal feeding stuffs. This is a general power which the Scottish Government anticipates would be used only if existing powers (largely contained under section 2(2) of the European Communities Act 1972) could not be relied on to make regulations on animal feeding stuffs. The section also limits the provision which may be made for punishment of offences contained in such an order.
43. A similar power is currently available in the 1999 Act, and this provision retains this as a fall-back power. The Scottish Ministers must consult widely and take advice from FSS before making any such order.