



Food (Scotland) Act 2015

2015 asp 1

PART 1

FOOD STANDARDS SCOTLAND

Food Standards Scotland

1 Establishment

There is established a body corporate called Food Standards Scotland or, in Gaelic, Inbhe-Bidhe Alba.

2 Objectives

- (1) The objectives of Food Standards Scotland are—
 - (a) to protect the public from risks to health which may arise in connection with the consumption of food,
 - (b) to improve the extent to which members of the public have diets which are conducive to good health,
 - (c) to protect the other interests of consumers in relation to food.
- (2) The risks referred to in subsection (1)(a) include risks caused by the way in which food is produced or supplied.
- (3) Food Standards Scotland must so far as reasonably practicable perform its functions in a way—
 - (a) which is compatible with its objectives, and
 - (b) which it considers most appropriate for the purpose of meeting those objectives.

3 General functions

- (1) The general functions of Food Standards Scotland are—
 - (a) to develop (and assist the Scottish Ministers and public bodies and office-holders to develop) policies in relation to food matters and animal feeding stuffs matters,

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- (b) to advise, inform and assist the Scottish Ministers and public bodies and office-holders and other persons in relation to food matters and animal feeding stuffs matters,
 - (c) to keep the public adequately informed about and advised in relation to matters which significantly affect their capacity to make informed decisions about food matters,
 - (d) to keep users of animal feeding stuffs adequately informed about and advised in relation to matters which significantly affect their capacity to make informed decisions about animal feeding stuffs matters, and
 - (e) to monitor the performance of, and promote best practice by, enforcement authorities in enforcing food legislation.
- (2) Food Standards Scotland must so far as reasonably practicable comply with a request by the Scottish Ministers that—
- (a) in pursuance of subsection (1)(a), it develops a policy, or assists the Scottish Ministers or a public body or office-holder to develop a policy, in relation to a particular matter,
 - (b) in pursuance of subsection (1)(b), it gives advice, information or assistance to the Scottish Ministers, a public body or office-holder or another person, in relation to a particular matter,
 - (c) in pursuance of subsection (1)(c), it informs or advises the public in relation to a particular matter,
 - (d) in pursuance of subsection (1)(d), it informs or advises users of animal feeding stuffs in relation to a particular matter.

4 Governance and accountability

- (1) Food Standards Scotland must so far as reasonably practicable operate in a way which—
- (a) is proportionate, transparent and accountable,
 - (b) constitutes good decision-making practice,
 - (c) develops and maintains effective links with the persons mentioned in subsection (3), and
 - (d) is consistent with any other principle of good governance which appears to it to constitute best practice.
- (2) “Good decision-making practice” means—
- (a) consulting people who may be affected by decisions before taking them,
 - (b) having good information on which to take decisions and taking decisions based on that information,
 - (c) recording decisions and the reasons for them, and
 - (d) making decisions and the reasons for them publicly available.
- (3) The persons referred to in subsection (1)(c) are—
- (a) the Scottish Ministers,
 - (b) public bodies and office-holders with functions in relation to food matters or animal feeding stuffs matters.

5 Statement on performance of functions

- (1) Food Standards Scotland must prepare for approval by the Scottish Ministers a statement setting out how it intends to perform its functions.
- (2) The statement must include information on how Food Standards Scotland intends—
 - (a) to meet its objectives, and
 - (b) to operate in accordance with section 4.
- (3) The statement must be submitted to the Scottish Ministers by such time as they may direct.
- (4) The Scottish Ministers may approve the statement with such modifications as they consider appropriate.
- (5) Before approving the statement with modifications the Scottish Ministers must consult Food Standards Scotland.
- (6) As soon as practicable after the statement is approved under subsection (4), Food Standards Scotland must—
 - (a) lay a copy of it before the Scottish Parliament, and
 - (b) publish it (in such manner as Food Standards Scotland considers appropriate).
- (7) Food Standards Scotland—
 - (a) must review the statement from time to time, and
 - (b) may in consequence prepare and submit to the Scottish Ministers a revised statement.
- (8) Subsections (2) and (4) to (7) apply to a revised statement as they apply to the original statement.

Membership

6 Number and appointment of members

- (1) Food Standards Scotland is to consist of—
 - (a) a person appointed by the Scottish Ministers to chair Food Standards Scotland, and
 - (b) no fewer than 3 nor more than 7 other members appointed by the Scottish Ministers.
- (2) A person may not be appointed as a member if the person is—
 - (a) a member of the Scottish Parliament,
 - (b) a member of the House of Commons,
 - (c) a member of the European Parliament,
 - (d) an office-holder in the Scottish Administration,
 - (e) a councillor of any local authority,
 - (f) an employee of any local authority.
- (3) The Scottish Ministers must make appointments of members of Food Standards Scotland in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.

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- (4) In subsection (3), “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998.
- (5) Membership is (subject to sections 7 and 18) for such period and on such terms and conditions as the Scottish Ministers may determine.
- (6) A member may resign by informing the Scottish Ministers in writing to that effect.
- (7) A person may be re-appointed on, or after, ceasing to be a member.
- (8) The Scottish Ministers may assign to one of the members appointed under subsection (1)(b)—
 - (a) the function of deputising for the person appointed under subsection (1)(a),
 - (b) the function of chairing Food Standards Scotland during any period when there is no person appointed under subsection (1)(a).
- (9) A member to whom such a function is assigned—
 - (a) is assigned the function for such period as the Scottish Ministers may specify in the assignment,
 - (b) may resign the assignment by informing the Scottish Ministers in writing to that effect,
 - (c) is assigned and ceases to be assigned the function in accordance with such terms and conditions as the Scottish Ministers may determine.

7 Early ending of membership

- (1) A person’s membership of Food Standards Scotland ends if the person becomes—
 - (a) a member of the Scottish Parliament,
 - (b) a member of the House of Commons,
 - (c) a member of the European Parliament,
 - (d) an office-holder in the Scottish Administration,
 - (e) a councillor of any local authority,
 - (f) an employee of any local authority.
- (2) The Scottish Ministers may end a person’s membership of Food Standards Scotland if—
 - (a) the person becomes an undischarged bankrupt, or
 - (b) the Scottish Ministers are satisfied that the person—
 - (i) has, without the permission of Food Standards Scotland, been absent from its meetings for a period longer than 6 consecutive months,
 - (ii) is unable to perform the functions of a member, or
 - (iii) is unsuitable to continue as a member.

8 Remuneration and expenses of members

- (1) A member of Food Standards Scotland is entitled to—
 - (a) such remuneration as the Scottish Ministers may determine,
 - (b) such sums as the Scottish Ministers may determine to reimburse or compensate the member in relation to expenses properly incurred in the exercise of the member’s functions.

- (2) It is for Food Standards Scotland to pay any remuneration and other sums to which its members are entitled by virtue of subsection (1).

Staff

9 Chief executive

- (1) Food Standards Scotland is to have, as a member of staff, a chief executive.
- (2) The first chief executive is to be appointed by the Scottish Ministers on such terms and conditions as they determine.
- (3) Before appointing the first chief executive, the Scottish Ministers must consult Food Standards Scotland.
- (4) Food Standards Scotland may, with the approval of the Scottish Ministers, appoint subsequent chief executives on such terms and conditions as it, with the approval of the Scottish Ministers, determines.

10 Other staff

- (1) Food Standards Scotland may appoint staff other than the chief executive.
- (2) Members of staff are to be appointed on such terms and conditions as Food Standards Scotland, with the approval of the Scottish Ministers, determines.
- (3) The number of staff is not to exceed any maximum that the Scottish Ministers may determine.

Operational matters

11 Proceedings

It is for Food Standards Scotland to regulate its procedure (including any quorum).

12 Committees

- (1) Food Standards Scotland may establish committees.
- (2) A committee established by Food Standards Scotland may include as a member a person who is not a member of Food Standards Scotland.
- (3) Such a person is entitled to—
 - (a) such remuneration as Food Standards Scotland may determine,
 - (b) such sums as Food Standards Scotland may determine to reimburse or compensate the person in relation to expenses properly incurred in the exercise of the person's functions.
- (4) It is for Food Standards Scotland to pay any remuneration and other sums to which such a person is entitled by virtue of subsection (3).
- (5) It is for Food Standards Scotland to regulate the procedure (including any quorum) of any committee established by it.

13 Validity of things done

The validity of anything done by Food Standards Scotland or its committees is not affected by—

- (a) a vacancy in membership,
- (b) a defect in the appointment of a member,
- (c) a person's membership having ended under section 7.

14 Authority to exercise functions

- (1) Food Standards Scotland may authorise the exercise of any of its functions by—
 - (a) one (or some) of its members,
 - (b) a committee established by it, or
 - (c) (subject to subsection (2)) a member of its staff.
- (2) Subsection (1)(c) does not apply in relation to—
 - (a) the function of giving authorisations under section 21(1),
 - (b) the function of giving authorisations under section 28(1).
- (3) Authorisation for the purposes of this section may be general or limited to the exercise of the function in specific circumstances.
- (4) This section does not affect the responsibility of Food Standards Scotland for the exercise of its functions.

15 Annual and other reports

- (1) As soon as practicable after the end of each financial year, Food Standards Scotland must prepare and publish an annual report on the exercise of its functions during that financial year.
- (2) An annual report must contain Food Standards Scotland's assessment of its performance of its functions in relation to—
 - (a) the statement of performance of functions under section 5 applying during the financial year to which the annual report relates, or
 - (b) if more than one statement of performance of functions applied during the financial year, each such statement for the period during the financial year when the statement applied.
- (3) Subject to subsections (1) and (2), it is for Food Standards Scotland to determine the content of an annual report.
- (4) It is for Food Standards Scotland to determine—
 - (a) the form of an annual report, and
 - (b) the manner of publication.
- (5) As soon as practicable after publishing an annual report, Food Standards Scotland must—
 - (a) send a copy of the report to the Scottish Ministers,
 - (b) lay a copy of the report before the Scottish Parliament.
- (6) Food Standards Scotland may lay a copy of any other report prepared by it before the Scottish Parliament.

16 General powers

- (1) Food Standards Scotland may do anything which it considers necessary or expedient for the purposes of or in connection with its functions.
- (2) Food Standards Scotland may not however—
 - (a) determine the location of its office without the approval of the Scottish Ministers,
 - (b) make charges for facilities or services provided by it at the request of any person which exceed the reasonable cost of providing the facilities or services concerned.

Legislation relating to public bodies

17 Application of legislation relating to public bodies

- (1) In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), after the entry relating to the Crofting Commission insert—
“Food Standards Scotland”.
- (2) In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities), after paragraph 22 insert—
“22A Food Standards Scotland.”.
- (3) In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities), after paragraph 7A insert—
“7B Food Standards Scotland.”.
- (4) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities), after the entry relating to the Crofting Commission insert—
“Food Standards Scotland”.
- (5) In the Public Services Reform (Scotland) Act 2010—
 - (a) in schedule 8 (information on exercise of public functions: listed public bodies), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—
“Food Standards Scotland”,
 - (b) in schedule 19 (persons subject to the user focus duty), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—
“Food Standards Scotland”,
 - (c) in schedule 20 (persons subject to the duty of co-operation), after the entry relating to the Accounts Commission for Scotland insert—
“Food Standards Scotland”.
- (6) In the Public Records (Scotland) Act 2011, in the schedule (authorities to which Part 1 applies), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—
“Food Standards Scotland”.
- (7) In the Regulatory Reform (Scotland) Act 2014, in schedule 1 (regulators for the purposes of Part 1), before the entry relating to Healthcare Improvement Scotland insert—

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“Food Standards Scotland”.

- (8) In the Procurement Reform (Scotland) Act 2014, in Part 1 of the schedule (contracting authorities: Scottish Administration and Scottish Parliament), after paragraph 13A insert—

“13B Food Standards Scotland”.

Step-in powers

18 Serious failure

- (1) This section applies where the Scottish Ministers consider that there has been a serious failure by Food Standards Scotland to exercise any of its functions.
- (2) The Scottish Ministers may give Food Standards Scotland such directions as they consider appropriate to remedy the failure.
- (3) But before doing so, the Scottish Ministers must consult Food Standards Scotland.
- (4) A direction under this section—
- (a) must be in writing,
 - (b) must include a statement summarising the reasons for giving it.
- (5) The Scottish Ministers must publish any direction under this section (in such manner as they consider appropriate).
- (6) If Food Standards Scotland fails to comply with a direction under this section, the Scottish Ministers may give effect to it (and for that purpose, may exercise any function of Food Standards Scotland in place of it).
- (7) If Food Standards Scotland fails to comply with a direction under this section, the Scottish Ministers—
- (a) may end the membership of all its members, and
 - (b) may, until new members are appointed, exercise any function of Food Standards Scotland in place of it (or appoint any other person to do so).

Acquisition of information

19 Duty to acquire, compile and keep under review relevant information

- (1) For the purpose of enabling it to perform its other functions effectively and to operate in accordance with section 4, Food Standards Scotland is to acquire, compile and keep under review information about food matters and animal feeding stuffs matters.
- (2) The function in subsection (1) includes in particular—
- (a) monitoring developments in science, technology and other fields of knowledge relating to food matters and animal feeding stuffs matters,
 - (b) carrying out, commissioning or co-ordinating research on food matters and animal feeding stuffs matters.

20 Observations with a view to obtaining information

- (1) For the purpose of exercising its function under section 19, Food Standards Scotland may carry out observations (or arrange for observations to be carried out on its behalf by any other person) with a view to obtaining information about—
 - (a) any aspect of the production or supply of food or food sources, or the consumption of food, or
 - (b) any aspect of the production, supply or use of animal feeding stuffs.
- (2) The information which may be sought through such observations includes in particular information about—
 - (a) food premises, food businesses or commercial operations being carried out in relation to food, food sources or contact materials,
 - (b) agricultural premises, agricultural businesses or agricultural activities,
 - (c) premises, businesses or operations involved in fish farming,
 - (d) premises, businesses or operations involved in the production, supply or use of animal feeding stuffs.
- (3) In this section—

“agricultural activity” has the same meaning as in the Agriculture Act 1947,
“agricultural business” has the same meaning as in section 1 of the Farm Land and Rural Development Act 1988,
“agricultural premises” means any premises used for the purposes of an agricultural business.

21 Powers for persons carrying out observations

- (1) Any member of staff or other individual may, if authorised to do so by Food Standards Scotland, exercise the powers specified in subsection (2) for the purpose of carrying out observations under section 20 in relation to a particular matter.
- (2) The powers are—
 - (a) entering premises (other than a dwelling house) at a reasonable time,
 - (b) taking samples of any articles or substances on the premises,
 - (c) taking samples from any food source on the premises,
 - (d) inspecting and copying any information in a recorded form on the premises which relates to a business which is the subject of the observations (and where such information is in electronic form, requiring the information to be produced in a legible form in which it may be copied or taken away),
 - (e) requiring any person carrying on a business which is the subject of the observations to provide such facilities or information and such other assistance as the authorised person reasonably requests.
- (3) The reference in subsection (2)(d) to information which relates to a business includes a reference to information which—
 - (a) relates to the health of a person who has, may have or may come into contact with food or food sources in the course of that person’s work for the business, and
 - (b) was acquired or compiled for the purpose of assessing, or is kept for the purpose of recording, matters affecting the person’s suitability for working in the production or supply of food or food sources (including any risks to

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public health which may arise if the person comes into contact with any food or food source).

- (4) An authorisation under subsection (1)—
 - (a) must be in writing,
 - (b) may include limitations or conditions (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation).
- (5) The powers specified in subsection (2) may be exercised only if it appears to the authorised person to be necessary to do so for the purpose of carrying out the observations concerned.
- (6) An authorised person must if so required—
 - (a) produce evidence of the person’s identity and authorisation before exercising a power in pursuance of the authorisation,
 - (b) provide a document identifying any sample taken, or information copied, under those powers.
- (7) In this section, “authorised person” means a person authorised under subsection (1).

22 Offences in relation to section 21

- (1) Where subsection (2) applies, an authorised person commits an offence if the person makes use of or discloses to any other person any information obtained while on premises entered in exercise of the power in section 21(2)(a).
- (2) This subsection applies if—
 - (a) the information relates to a trade secret, and
 - (b) the information is used or the disclosure is made other than in performance of the authorised person’s duty.
- (3) A person commits an offence if the person—
 - (a) intentionally obstructs an authorised person in exercising a power in section 21(2)(a), (b), (c) or (d),
 - (b) fails without reasonable excuse to comply with any requirement imposed under section 21(2)(e), or
 - (c) in purported compliance with a requirement imposed under section 21(2)(e)—
 - (i) provides information which the person knows to be false or misleading in a material way, or
 - (ii) recklessly provides information which is false or misleading in a material way.
- (4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) In this section, “authorised person” means a person authorised under section 21(1).

Enforcement action

23 Setting performance standards

- (1) For the purpose of carrying out its function under section 3(1)(e), Food Standards Scotland may determine standards of performance for enforcement authorities in enforcing food legislation.
- (2) Different standards may be determined in relation to—
 - (a) different enforcement authorities (or types of enforcement authorities),
 - (b) different food legislation (or types of food legislation).
- (3) Food Standards Scotland may vary or revoke any standards determined under subsection (1).

24 Reporting own enforcement activities

- (1) Food Standards Scotland must include in each annual report it prepares a report on—
 - (a) its activities during the financial year to which the report relates in enforcing any food legislation for which it is the enforcement authority, and
 - (b) its performance in relation to any standards determined under section 23(1) applying to those activities.
- (2) In this section, “annual report” means a report prepared under section 15(1).

25 Reporting on enforcement action by others

- (1) In consequence of the exercise of its function under section 3(1)(e), Food Standards Scotland may make a report to any enforcement authority on the authority’s performance in enforcing any food legislation.
- (2) A report under subsection (1) may include guidance as to action which Food Standards Scotland considers—
 - (a) is necessary to enable the enforcement authority to meet any standards determined under section 23(1) which apply, or
 - (b) otherwise, would help to improve the performance of the authority.
- (3) Food Standards Scotland may direct an authority to which a report has been made under subsection (1)—
 - (a) to arrange for the publication (in such manner as may be specified) of—
 - (i) the report, or
 - (ii) specified information relating to the report, or
 - (b) to notify Food Standards Scotland (within such period as may be specified) of what action the authority has taken or proposes to take in response to the report.
- (4) In subsection (3), “specified” means specified in the direction.

26 Power to request information in relation to enforcement action

- (1) For the purpose of carrying out its function under section 3(1)(e) in relation to any enforcement authority, Food Standards Scotland may require a person mentioned in subsection (2)—
 - (a) to provide Food Standards Scotland with any information which it has reasonable cause to believe that the person is able to give, or
 - (b) to make available to Food Standards Scotland for inspection any information in a recorded form which it has reasonable cause to believe is held by that person or is otherwise within that person's control (and where such information is in electronic form, to make it available in a legible form).
- (2) A requirement under subsection (1) may be imposed on—
 - (a) the enforcement authority, or any member, officer or employee of the authority, or
 - (b) a person subject to any duty under food legislation (being a duty enforceable by an enforcement authority) or any officer or employee of such a person.
- (3) Food Standards Scotland may copy any information made available to it in pursuance of a requirement under subsection (1)(b).

27 Offences in relation to section 26

- (1) A person commits an offence if the person—
 - (a) fails without reasonable excuse to comply with any requirement imposed under section 26(1), or
 - (b) in purported compliance with a requirement imposed under section 26(1)—
 - (i) provides information which the person knows to be false or misleading in a material way, or
 - (ii) recklessly provides information which is false or misleading in a material way.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

28 Powers for persons monitoring enforcement action

- (1) Any member of staff or other individual may, if authorised to do so by Food Standards Scotland, exercise the powers specified in subsection (2) for the purpose of carrying out the function under section 3(1)(e) in relation to any enforcement authority.
- (2) The powers are—
 - (a) entering any premises mentioned in subsection (3) at any reasonable time in order to inspect the premises or anything which may be on them,
 - (b) taking samples of any articles or substances on the premises,
 - (c) inspecting and copying any information in a recorded form on the premises (and where such information is in electronic form, requiring the information to be produced in a legible form in which it may be copied or taken away),
 - (d) requiring any person present on the premises to provide such facilities or information and such other assistance as the authorised person reasonably requests.

- (3) The premises in relation to which the power in subsection (2)(a) may be exercised are—
- (a) any premises occupied by the enforcement authority (but see subsection (4)),
 - (b) any laboratory (or similar premises) at which work related to the enforcement of any food legislation has been carried out for the enforcement authority,
 - (c) any other premises (other than a dwelling house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable.
- (4) Subsection (3)(a) does not apply where the enforcement authority is the Scottish Ministers.
- (5) An authorisation under subsection (1)—
- (a) must be in writing,
 - (b) may include limitations or conditions (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation).
- (6) An authorised person must if so required—
- (a) produce the authorisation before exercising a power mentioned in subsection (2),
 - (b) provide a document identifying any sample taken, or information copied, under any of those powers.
- (7) In this section, “authorised person” means a person authorised under subsection (1).

29 Offences in relation to section 28

- (1) Where subsection (2) applies, an authorised person commits an offence if the person makes use of or discloses to any other person any information obtained while on premises entered in exercise of the power in section 28(2)(a).
- (2) This subsection applies if—
- (a) the information relates to a trade secret, and
 - (b) the information is used or the disclosure is made other than in performance of the authorised person’s duty.
- (3) A person commits an offence if the person—
- (a) intentionally obstructs an authorised person in exercising a power in section 28(2)(a), (b) or (c),
 - (b) fails without reasonable excuse to comply with any requirement imposed under section 28(2)(d), or
 - (c) in purported compliance with a requirement imposed under section 28(2)(d)—
 - (i) provides information which the person knows to be false or misleading in a material way, or
 - (ii) recklessly provides information which is false or misleading in a material way.
- (4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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- (5) In this section, “authorised person” means a person authorised under section 28(1).

Issuing guidance on food-borne diseases

30 Power to issue guidance on control of food-borne diseases

- (1) Food Standards Scotland may issue to the persons mentioned in subsection (3) guidance about the exercise, generally, of their functions in relation to matters connected with the management of outbreaks (or suspected outbreaks) of food-borne diseases.
- (2) “Food-borne diseases” means diseases of humans which are capable of being caused by the consumption of infected or otherwise contaminated food.
- (3) The persons referred to in subsection (1) are—
 - (a) the Scottish Ministers,
 - (b) public bodies and office-holders.
- (4) Different guidance may be issued to different persons or for different purposes.
- (5) Food Standards Scotland must publish any such guidance (in such manner as it considers appropriate).
- (6) A person to whom any such guidance is issued must have regard to the guidance in exercising any function to which it relates.
- (7) The power to issue guidance under subsection (1) is without prejudice to the other powers of Food Standards Scotland.
- (8) The power in subsection (1) includes power to issue revised guidance (and references in this section to guidance are to be construed accordingly).

Information sharing

31 Publication and disclosure of advice and information

- (1) Food Standards Scotland may—
 - (a) publish (in such manner as it considers appropriate), or
 - (b) disclose to the Scottish Ministers or a public body or office-holder, any material to which this section applies.
- (2) This section applies to—
 - (a) any advice given by Food Standards Scotland under section 3,
 - (b) any information obtained by Food Standards Scotland through—
 - (i) monitoring under section 3, or
 - (ii) observations under section 20, or
 - (c) any other information in the possession of Food Standards Scotland (whatever the source).
- (3) Subsection (1) does not authorise publication or disclosure of material which—
 - (a) is prohibited by an enactment, or
 - (b) would constitute or be punishable as a contempt of court.

- (4) But, otherwise, the powers in subsection (1) are exercisable free from any prohibition on publication or disclosure (as the case may be) which would apply.
- (5) Before deciding to exercise a power in subsection (1) in relation to any particular material, Food Standards Scotland must consider whether the public interest in the publication or disclosure of the material concerned is outweighed by any considerations of confidentiality attaching to it.
- (6) Where the material relates to the performance of enforcement authorities, or particular enforcement authorities, in enforcing food legislation, subsection (5) applies only so far as the material relates to a person other than—
 - (a) an enforcement authority, or
 - (b) a member, officer or employee of an enforcement authority acting in that person’s capacity as such.

Consequential provision

32 Certain functions of Food Standards Agency ceasing to be exercisable

- (1) The relevant functions of the Agency conferred by the 1999 Act cease to be exercisable.
- (2) In subsection (1), “relevant functions of the Agency” has the same meaning as in section 35 of the 1999 Act.