



# Food (Scotland) Act 2015

## 2015 asp 1

### PART 3

#### ADMINISTRATIVE SANCTIONS

##### *Compliance notices*

#### **42 Compliance notices**

- (1) An authorised officer of the appropriate enforcement authority may issue to a person a compliance notice in relation to a relevant offence.
- (2) A “compliance notice” is a notice requiring the person to whom it is issued to take steps to ensure that the person ceases to commit a relevant offence.
- (3) An authorised officer may issue a compliance notice to a person in relation to a relevant offence only if the officer is satisfied to the specified standard that the person has committed the offence.

#### **43 Content and form of a compliance notice**

- (1) A compliance notice must include the following information—
  - (a) a statement of the grounds for issuing the notice, including a statement of—
    - (i) the relevant offence that is alleged to have been committed, and
    - (ii) the act or omission giving rising to the offence,
  - (b) details of the steps that are required to be taken to ensure that the person to whom the notice is issued ceases to commit the relevant offence,
  - (c) the date of issue of the notice,
  - (d) the period of time within which the required steps are to be taken,
  - (e) information about the person to whom, and as to how and by when, any representations about the notice may be made,
  - (f) information about the right of appeal, including the period of time within which an appeal may be made,
  - (g) an explanation of the effect of complying with the requirements of the notice and of the consequences of failure to comply with those requirements.

- (2) The reference in subsection (1)(d) to the period of time within which the required steps are to be taken is a reference to such period, beginning with the date on which the notice was issued, as the authorised officer issuing the notice may determine.
- (3) That period must not be less than the specified period.
- (4) The Scottish Ministers may by regulations make further provision about the form and content of compliance notices including, in particular—
  - (a) provision about the form and content of any of the information required to be included under subsection (1),
  - (b) provision about other information that is to be included in addition to that required under subsection (1).

#### **44 Failure to comply with a compliance notice**

- (1) If a person to whom a compliance notice has been issued fails to comply with the notice, the person commits an offence.
- (2) Where a person to whom a compliance notice has been issued fails to take any step required by the notice, the person does not, by reason of that failure, commit an offence under subsection (1) if—
  - (a) the person takes other steps to ensure that the person ceases to commit the relevant offence in respect of which the notice was issued, and
  - (b) an authorised officer of the appropriate enforcement authority notifies the person in writing that those steps are acceptable for the purposes of complying with the notice.
- (3) 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.

#### **45 Effect of a compliance notice on criminal proceedings**

- (1) Where a compliance notice is issued to a person in relation to a relevant offence—
  - (a) no criminal proceedings for the relevant offence may be brought against the person in respect of the relevant act or omission before the end of the compliance period, and
  - (b) if the person—
    - (i) complies with the requirements of the notice, or
    - (ii) though failing to comply, does not, by virtue of subsection (2) of section 44, commit an offence under subsection (1) of that section in relation to the notice,the person may not at any time be convicted of the relevant offence in respect of the relevant act or omission.
- (2) In subsection (1), “the relevant act or omission” means the act or omission—
  - (a) constituting the relevant offence, and
  - (b) by reason of which the compliance notice is issued.

#### **46 Restrictions on issuing of a compliance notice**

- (1) A compliance notice may not be issued to a person in relation to a relevant offence arising out of a particular act or omission if—
  - (a) a compliance notice has previously been issued to the person (and not withdrawn) in relation to the same relevant offence arising out of the same act or omission, or
  - (b) criminal proceedings have been brought against the person for the same relevant offence arising out of the same act or omission.
- (2) A compliance notice issued in contravention of subsection (1) is of no effect.

#### **47 Withdrawal of a compliance notice**

- (1) An authorised officer of the appropriate enforcement authority may withdraw a compliance notice issued by an authorised officer of the authority.
- (2) A compliance notice—
  - (a) may be withdrawn at any time before completion of the steps that are to be taken to comply with the requirements of the notice, and
  - (b) is withdrawn by the issuing of a notice in writing to that effect to the person to whom the compliance notice was issued.
- (3) Where a compliance notice is withdrawn, it is to be treated as if it had never been issued.

#### **48 Appeal against a compliance notice**

- (1) A person to whom a compliance notice has been issued may, before the expiry of the relevant period, appeal to a sheriff against the decision to issue the notice.
- (2) An appeal is to be made by way of summary application.
- (3) In subsection (1), the “relevant period” means—
  - (a) the period of one month beginning with the date of issue of the compliance notice, or
  - (b) the compliance period,whichever expires earlier.
- (4) In an appeal under this section, the sheriff may—
  - (a) cancel the compliance notice, or
  - (b) affirm the notice, either with or without modifications.
- (5) Where an appeal is made under this section, the compliance period is suspended for the period during which the appeal is pending.
- (6) For the purposes of subsection (5), the appeal is pending until it is finally determined or is withdrawn.