



Food Safety Act 1990

1990 CHAPTER 16

PART III

ADMINISTRATION AND ENFORCEMENT

Administration

27 Appointment of public analysts

- (1) Every authority to whom this section applies, that is to say, every food authority in England and Wales and every regional or islands council in Scotland, shall appoint in accordance with this section one or more persons (in this Act referred to as “public analysts”) to act as analysts for the purposes of this Act within the authority’s area.
- (2) No person shall be appointed as a public analyst unless he possesses—
 - (a) such qualifications as may be prescribed by regulations made by the Ministers; or
 - (b) such other qualifications as the Ministers may approve,and no person shall act as a public analyst for any area who is engaged directly or indirectly in any food business which is carried on in that area.
- (3) An authority to whom this section applies shall pay to a public analyst such remuneration as may be agreed, which may be expressed to be payable either—
 - (a) in addition to any fees received by him under this Part; or
 - (b) on condition that any fees so received by him are paid over by him to the authority.
- (4) An authority to whom this section applies who appoint only one public analyst may appoint also a deputy to act during any vacancy in the office of public analyst, or during the absence or incapacity of the holder of the office, and—
 - (a) the provisions of this section with respect to the qualifications, appointment, removal and remuneration of a public analyst shall apply also in relation to a deputy public analyst; and

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- (b) any reference in the following provisions of this Act to a public analyst shall be construed as including a reference to a deputy public analyst appointed under this subsection.

- (5) In subsection (1) above “food authority” does not include the council of a non-metropolitan district, the Sub-Treasurer of the Inner Temple or the Under Treasurer of the Middle Temple; and in subsection (2) above the reference to being engaged directly or indirectly in a food business includes a reference to having made such arrangements with a food business as may be prescribed by regulations made by the Ministers.

28 Provision of facilities for examinations

- (1) A food authority, or a regional council in Scotland, may provide facilities for examinations for the purposes of this Act.
- (2) In this Act “examination” means a microbiological examination and “examine” shall be construed accordingly.

Sampling and analysis etc.

29 Procurement of samples

An authorised officer of an enforcement authority may—

- (a) purchase a sample of any food, or any substance capable of being used in the preparation of food;
- (b) take a sample of any food, or any such substance, which—
 - (i) appears to him to be intended for sale, or to have been sold, for human consumption; or
 - (ii) is found by him on or in any premises which he is authorised to enter by or under section 32 below;
- (c) take a sample from any food source, or a sample of any contact material, which is found by him on or in any such premises;
- (d) take a sample of any article or substance which is found by him on or in any such premises and which he has reason to believe may be required as evidence in proceedings under any of the provisions of this Act or of regulations or orders made under it.

30 Analysis etc. of samples

- (1) An authorised officer of an enforcement authority who has procured a sample under section 29 above shall—
 - (a) if he considers that the sample should be analysed, submit it to be analysed either—
 - (i) by the public analyst for the area in which the sample was procured; or
 - (ii) by the public analyst for the area which consists of or includes the area of the authority;
 - (b) if he considers that the sample should be examined, submit it to be examined by a food examiner.
- (2) A person, other than such an officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it—

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- (a) to be analysed by the public analyst for the area in which the purchase was made; or
 - (b) to be examined by a food examiner.
- (3) If, in any case where a sample is proposed to be submitted for analysis under this section, the office of public analyst for the area in question is vacant, the sample shall be submitted to the public analyst for some other area.
- (4) If, in any case where a sample is proposed to be or is submitted for analysis or examination under this section, the food analyst or examiner determines that he is for any reason unable to perform the analysis or examination, the sample shall be submitted or, as the case may be, sent by him to such other food analyst or examiner as he may determine.
- (5) A food analyst or examiner shall analyse or examine as soon as practicable any sample submitted or sent to him under this section, but may, except where—
- (a) he is the public analyst for the area in question; and
 - (b) the sample is submitted to him for analysis by an authorised officer of an enforcement authority,
- demand in advance the payment of such reasonable fee as he may require.
- (6) A food analyst or examiner who has analysed or examined a sample shall give to the person by whom it was submitted a certificate specifying the result of the analysis or examination.
- (7) Any certificate given by a food analyst or examiner under subsection (6) above shall be signed by him, but the analysis or examination may be made by any person acting under his direction.
- (8) In any proceedings under this Act, the production by one of the parties—
- (a) of a document purporting to be a certificate given by a food analyst or examiner under subsection (6) above; or
 - (b) of a document supplied to him by the other party as being a copy of such a certificate,
- shall be sufficient evidence of the facts stated in it unless, in a case falling within paragraph (a) above, the other party requires that the food analyst or examiner shall be called as a witness.
- (9) In this section—
- “food analyst” means a public analyst or any other person who possesses the requisite qualifications to carry out analyses for the purposes of this Act;
 - “food examiner” means any person who possesses the requisite qualifications to carry out examinations for the purposes of this Act;
 - “the requisite qualifications” means such qualifications as may be prescribed by regulations made by the Ministers, or such other qualifications as the Ministers may approve;
 - “sample”, in relation to an authorised officer of an enforcement authority, includes any part of a sample retained by him in pursuance of regulations under section 31 below;

and where two or more public analysts are appointed for any area, any reference in this section to the public analyst for that area shall be construed as a reference to either or any of them.

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31 Regulation of sampling and analysis etc

- (1) The Ministers may by regulations make provision for supplementing or modifying the provisions of sections 29 and 30 above.
- (2) Without prejudice to the generality of subsection (1) above, regulations under that subsection may make provision with respect to—
 - (a) the matters to be taken into account in determining whether, and at what times, samples should be procured;
 - (b) the manner of procuring samples, including the steps to be taken in order to ensure that any samples procured are fair samples;
 - (c) the method of dealing with samples, including (where appropriate) their division into parts;
 - (d) the persons to whom parts of samples are to be given and the persons by whom such parts are to be retained;
 - (e) the notices which are to be given to, and the information which is to be furnished by, the persons in charge of any food, substance, contact material or food source of or from which samples are procured;
 - (f) the methods which are to be used in analysing or examining samples, or parts of samples, or in classifying the results of analyses or examinations;
 - (g) the circumstances in which a food analyst or examiner is to be precluded, by reason of a conflict of interest, from analysing or examining a particular sample or part of a sample; and
 - (h) the circumstances in which samples, or parts of samples, are to be or may be submitted for analysis or examination—
 - (i) to the Government Chemist, or to such other food analyst or examiner as he may direct; or
 - (ii) to a person determined by or under the regulations.
- (3) In this section “food analyst” and “food examiner” have the same meanings as in section 30 above.

Powers of entry and obstruction etc.

32 Powers of entry

- (1) An authorised officer of an enforcement authority shall, on producing, if so required, some duly authenticated document showing his authority, have a right at all reasonable hours—
 - (a) to enter any premises within the authority’s area for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of this Act, or of regulations or orders made under it; and
 - (b) to enter any business premises, whether within or outside the authority’s area, for the purpose of ascertaining whether there is on the premises any evidence of any contravention within that area of any of such provisions; and
 - (c) in the case of an authorised officer of a food authority, to enter any premises for the purpose of the performance by the authority of their functions under this Act;

but admission to any premises used only as a private dwelling-house shall not be demanded as of right unless 24 hours’ notice of the intended entry has been given to the occupier.

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- (2) If a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry into any premises for any such purpose as is mentioned in subsection (1) above and either—
- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
 - (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier temporarily absent,
- the justice may by warrant signed by him authorise the authorised officer to enter the premises, if need be by reasonable force.
- (3) Every warrant granted under this section shall continue in force for a period of one month.
- (4) An authorised officer entering any premises by virtue of this section, or of a warrant issued under it, may take with him such other persons as he considers necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as he found them.
- (5) An authorised officer entering premises by virtue of this section, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are kept by means of a computer—
- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and
 - (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require.
- (6) Any officer exercising any power conferred by subsection (5) above may—
- (a) seize and detain any records which he has reason to believe may be required as evidence in proceedings under any of the provisions of this Act or of regulations or orders made under it; and
 - (b) where the records are kept by means of a computer, may require the records to be produced in a form in which they may be taken away.
- (7) If any person who enters any premises by virtue of this section, or of a warrant issued under it, discloses to any person any information obtained by him in the premises with regard to any trade secret, he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.
- (8) Nothing in this section authorises any person, except with the permission of the local authority under the Animal Health Act 1981, to enter any premises—
- (a) in which an animal or bird affected with any disease to which that Act applies is kept; and
 - (b) which is situated in a place declared under that Act to be infected with such a disease.
- (9) In the application of this section to Scotland, any reference to a justice of the peace includes a reference to the sheriff and to a magistrate.

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33 **Obstruction etc. of officers**

- (1) Any person who—
- (a) intentionally obstructs any person acting in the execution of this Act; or
 - (b) without reasonable cause, fails to give to any person acting in the execution of this Act any assistance or information which that person may reasonably require of him for the performance of his functions under this Act,
- shall be guilty of an offence.
- (2) Any person who, in purported compliance with any such requirement as is mentioned in subsection (1)(b) above—
- (a) furnishes information which he knows to be false or misleading in a material particular; or
 - (b) recklessly furnishes information which is false or misleading in a material particular,
- shall be guilty of an offence.
- (3) Nothing in subsection (1)(b) above shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

Offences

34 **Time limit for prosecutions**

- No prosecution for an offence under this Act which is punishable under section 35(2) below shall be begun after the expiry of—
- (a) three years from the commission of the offence; or
 - (b) one year from its discovery by the prosecutor,
- whichever is the earlier.

35 **Punishment of offences**

- (1) A person guilty of an offence under section 33(1) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.
- (2) A person guilty of any other offence under this Act shall be liable—
- (a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both;
 - (b) on summary conviction, to a fine not exceeding the relevant amount or to imprisonment for a term not exceeding six months or to both.
- (3) In subsection (2) above “the relevant amount” means—
- (a) in the case of an offence under section 7, 8 or 14 above, £20,000;
 - (b) in any other case, the statutory maximum.
- (4) If a person who is—
- (a) licensed under section 1 of the Slaughterhouses Act 1974 to keep a slaughterhouse or knacker’s yard;
 - (b) registered under section 4 of the Slaughter of Animals (Scotland) Act 1980 in respect of any premises for use as a slaughterhouse; or

(c) licensed under section 6 of that Act to use any premises as a knacker's yard, is convicted of an offence under Part II of this Act, the court may, in addition to any other punishment, cancel his licence or registration.

36 Offences by bodies corporate

- (1) Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—
- (a) any director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person who was purporting to act in any such capacity,
- he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.
- (2) In subsection (1) above “director”, in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

Appeals

37 Appeals to magistrates' court or sheriff

- (1) Any person who is aggrieved by—
- (a) a decision of an authorised officer of an enforcement authority to serve an improvement notice;
 - (b) a decision of an enforcement authority to refuse to issue such a certificate as is mentioned in section 11(6) or 12(8) above; or
 - (c) subject to subsection (2) below, a decision of such an authority to refuse, cancel, suspend or revoke a licence required by regulations under Part II of this Act,
- may appeal to a magistrates' court or, in Scotland, to the sheriff.
- (2) Subsection (1)(c) above shall not apply in relation to any decision as respects which regulations under Part II of this Act provide for an appeal to a tribunal constituted in accordance with the regulations.
- (3) The procedure on an appeal to a magistrates' court under subsection (1) above, or an appeal to such a court for which provision is made by regulations under Part II of this Act, shall be by way of complaint for an order, and the Magistrates' Courts Act 1980 shall apply to the proceedings.
- (4) An appeal to the sheriff under subsection (1) above, or an appeal to the sheriff for which provision is made by regulations under Part II of this Act, shall be by summary application.
- (5) The period within which such an appeal as is mentioned in subsection (3) or (4) above may be brought shall be—
- (a) one month from the date on which notice of the decision was served on the person desiring to appeal; or

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(b) in the case of an appeal under subsection (1)(a) above, that period or the period specified in the improvement notice, whichever ends the earlier;
and, in the case of such an appeal as is mentioned in subsection (3) above, the making of the complaint shall be deemed for the purposes of this subsection to be the bringing of the appeal.

(6) In any case where such an appeal as is mentioned in subsection (3) or (4) above lies, the document notifying the decision to the person concerned shall state—

(a) the right of appeal to a magistrates' court or to the sheriff; and

(b) the period within which such an appeal may be brought.

38 Appeals to Crown Court

A person who is aggrieved by—

(a) any dismissal by a magistrates' court of such an appeal as is mentioned in section 37(3) above; or

(b) any decision of such a court to make a prohibition order or an emergency prohibition order, or to exercise the power conferred by section 35(4) above,

may appeal to the Crown Court.

39 Appeals against improvement notices

(1) On an appeal against an improvement notice, the court may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.

(2) Where, apart from this subsection, any period specified in an improvement notice would include any day on which an appeal against that notice is pending, that day shall be excluded from that period.

(3) An appeal shall be regarded as pending for the purposes of subsection (2) above until it is finally disposed of, is withdrawn or is struck out for want of prosecution.