



Food Act 1984

1984 CHAPTER 30

PART VI

ADMINISTRATION, ENFORCEMENT AND LEGAL PROCEEDINGS

Legal proceedings

92 Offences triable either way

- (1) A person guilty of an offence to which this section applies is liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or to both.
- (2) This section applies to any offence under this Act, except an offence—
 - (a) under section 65, or
 - (b) under any provision of this Act specified in section 93(3),but in the case of an offence under section 5(3) the liability under paragraph (a) of subsection (1) of this section includes a term of imprisonment not exceeding 3 months, or both such a term and the fine mentioned in that paragraph.

93 Summary offences

- (1) Any offence to which this section applies is triable summarily.
- (2) The offences to which this section applies are—
 - (a) an offence under any provision of this Act specified in subsection (3);
 - (b) an offence under regulations made under this Act other than an offence which by virtue of the regulations is triable either summarily or on indictment;
 - (c) an offence under byelaws made under this Act;
 - (d) an offence under an order made under section 5.
- (3) The provisions of this Act mentioned in paragraph (a) of subsection (2) are—

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- (a) section 18(4);
- (b) section 27(1).;
- (c) section 28(1);
- (d) section 28(3);
- (e) section 31(1);
- (f) section 53(4);
- (g) section 56(1);
- (h) section 58;
- (j) section 87(5);
- (k) section 91(1); and
- (l) section 91(3).

- (4) This section applies to Northern Ireland so far as it relates to those regulations and orders made under Part I which apply to Northern Ireland, and to the enforcement and execution of those regulations and orders.

94 Offences by corporations

- (1) Where an offence under this Act, or any regulations or order made 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) "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.

95 Prosecutions

- (1) No prosecution for an offence under this Act or regulations made under this Act which is triable either summarily or on indictment 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.
- (2) Where a sample has been procured under this Act, no prosecution in respect of the article or substance sampled shall be begun after the expiry of—
- (a) 28 days, in the case of a sample of milk,
 - (b) two months, in any other case,
- beginning with the date on which the sample was procured.
- (3) Subsection (2) does not apply where the justice of the peace before whom the information is laid certifies that he is satisfied on oath that having regard to the circumstances of the particular case it was not practicable to lay the information at an earlier date; but a prosecution in respect of a sample of milk shall not in any case be

begun after the expiry of 42 days beginning with the date on which the sample was procured.

- (4) Where a sample has been procured under this Act, any proceedings in respect of the article or substance sampled shall be taken before a court having jurisdiction in the place where the sample was procured; but—
- (a) where a sample procured within one area is for the purposes of this Act deemed to have been procured within another area, proceedings may, at the prosecutor's option, be taken either before a court having jurisdiction in the area within which the sample was procured, or before a court having jurisdiction in the area within which it is deemed to have been procured ; and
 - (b) where the article or substance sampled was sold and actually delivered to the purchaser, proceedings may, if the prosecutor so elects, be taken before a court having jurisdiction at the place of delivery.
- (5) In any proceedings under this Act in respect of an article or substance sampled—
- (a) the summons shall not be made returnable less than 14 days from the day on which it is served ; and
 - (b) a copy of any certificate of analysis obtained on behalf of the prosecutor, and of any certificate given by a justice under subsection (3), shall be served with the summons.
- (6) In any proceedings under this Act, where a sample has been procured in such circumstances that its division into parts is required by this Act, the part of the sample retained by the person who procured it shall be produced at the hearing.
- (7) Any regulations or order made under this Act and extending to Northern Ireland shall provide for applying, in relation to offences under them, the provisions—
- (a) of this section, or
 - (b) of any corresponding Northern Ireland enactment,
- subject to any such modifications or adaptations as may be specified in the regulations or order.
- (8) Notwithstanding subsection (1), a person is not liable to be prosecuted for an offence under this Act or regulations made under this Act which was committed before 1st January 1983.

96 Proceedings by Government departments and councils

- (1) Without prejudice to their powers of enforcement under any provision of this Act—
- (a) the authorities specified in the first column of Schedule 8 may, where they are of opinion that the general interests of consumers are affected, institute proceedings for any of the offences specified in relation to them respectively in the second column of that Schedule; but.
 - (b) except as otherwise expressly provided by this Act, proceedings shall not be instituted by any of those authorities for an offence against any such provisions of this Act, or of any regulations made under it, which it is the duty of any council to execute and enforce.
- (2) A food and drugs authority or a local authority may institute proceedings under any section of, or any regulations made under, this Act if, and only if, they are the authority charged with its execution and enforcement, except that a local authority may institute

proceedings under section 2 if the offence alleged relates to food which is alleged to contain some extraneous matter.

97 Evidence of analysis

- (1) In any proceedings under this Act, the production by one of the parties—
 - (a) of a document purporting to be a certificate of a public analyst in the form prescribed under section 79(5), 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 the first-mentioned case, the other party requires that the analyst shall be called as a witness.

- (2) In any such proceedings, if a sample of milk has been taken by an officer of one authority at the request of an officer of another authority, a document—
 - (a) which purports to be a certificate signed by the officer who took the sample, and
 - (b) which states that the provisions of this Act with respect to the manner in which samples are to be dealt with were complied with,
 shall, if a copy of it has been served on the defendant with the summons, be sufficient evidence of compliance with those provisions, unless the defendant requires that the officer shall be called as a witness.

- (3) In any such proceedings, if a defendant intends—
 - (a) to produce a certificate of a public analyst, or
 - (b) under subsection (1), to require that a public analyst shall be called as a witness, or
 - (c) under subsection (2), to require that a sampling officer shall be called as a witness,
 notice of his intention, together, in the first-mentioned case, with a copy of the certificate, shall be given to the other party at least three clear days before the day on which the summons is returnable, and, if this requirement is not complied with, the court may, if it thinks fit, adjourn the hearing on such terms as it thinks proper.

- (4) Regulations made under section 4 or section 7 may prescribe a method of analysis for the purpose of ascertaining the presence in, or absence from, any food of any substance specified in the regulations, or the quantity of any such substance which is present in any food; and in any proceedings under this Act—
 - (a) for a contravention of any regulations made under either of those sections, or
 - (b) for an offence under section 2 or section 6,
 in respect of any food alleged to contain, or not to contain, any substance specified as mentioned above, or any particular quantity of such a substance, evidence of an analysis carried out by the prescribed method shall be preferred to evidence of any other analysis or test

- (5) Subsection (4) applies to Northern Ireland so far as it relates—
 - (a) to those regulations and orders made under Part I which apply to Northern Ireland, and
 - (b) to the enforcement and execution of those regulations and orders,
 and accordingly that subsection is modified by the omission of the words " under this Act " and paragraph (b).

98 Presumptions

For the purposes of this Act and of any regulations or byelaws made under this Act—

- (a) any article commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale, for human consumption ;
- (b) any article commonly used for human consumption which is found on premises used for the preparation, storage, or sale of that article and any article commonly used in the manufacture of products for human consumption which is found on premises used for the preparation, storage or sale of those products, shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing products for sale, for human consumption ;
- (c) any substance capable of being used in the composition or preparation of any article commonly used for human consumption which is found on premises on which that article is prepared shall, until the contrary is proved, be presumed to be intended for such use.

99 Analysis by Government Chemist

- (1) The court before which any proceedings are taken under this Act may, if it thinks fit, and upon the request of either party shall, cause the part of any sample produced before the court under section 95(6) to be sent to the Government Chemist, who shall—
 - (a) make an analysis, and
 - (b) transmit to the court a certificate of its result,and the costs of the analysis shall be paid by the prosecutor or the defendant as the court may order.
- (2) If, in a case where an appeal is brought, no action has been taken under subsection (1), its provisions shall apply also in relation to the court by which the appeal is heard.
- (3) Any certificate of the results of an analysis transmitted by the Government Chemist under this section shall be signed by or on behalf of the Government Chemist, but—
 - (a) the analysis may be made by any person acting under the direction of the person by whom the certificate is signed; and
 - (b) any certificate so transmitted by the Government Chemist shall be evidence of the facts stated in it unless any party to the proceedings requires that the person by whom it is signed shall be called as a witness.

100 Contravention due to another's default

- (1) A person against whom proceedings are brought under this Act shall—
 - (a) upon information duly laid by him, and
 - (b) on giving to the prosecution not less than three clear days' notice of his intention,be entitled to have any person to whose act or default he alleges that the contravention of the provisions in question was due brought before the court in the proceedings ; and—
 - (i) if, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence; and

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- (ii) if the original defendant further proves that he has used all due diligence to secure that the provisions in question were complied with, he shall be acquitted of the offence.
- (2) Where a defendant seeks to avail himself of the provisions of subsection (1)—
 - (a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence;
 - (b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party to them.
- (3) Where—
 - (a) it appears to the authority concerned that an offence has been committed in respect of which proceedings might be taken under this Act against some person, and
 - (b) the authority are reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the first-mentioned person could establish a defence under subsection (1),

they may cause proceedings to be taken against that other person without first causing proceedings to be taken against the first-mentioned person.

In any such proceedings the defendant may be charged with, and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged.

101 Contravention in Scotland or Northern Ireland

- (1) Where proceedings are brought against any person (" the defendant") in respect of a contravention of any provision of this Act, or of regulations made under this Act, and it is proved—
 - (a) that the contravention was due to the act or default of some other person, being an act or default which took place in Scotland or Northern Ireland, and
 - (b) that the defendant used all due diligence to secure compliance with those provisions,
 the defendant shall, subject to subsection (2), be acquitted of the offence.
- (2) The defendant shall not be entitled to be acquitted under this section unless within seven days from the date of the service of the summons on him he has given written notice to the prosecution of his intention to rely upon the provisions of this section, specifying the name and address of the person to whose act or default he alleges that the contravention was due, and has sent a like notice to that person.
- (3) The person specified in a notice served under this section shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.
- (4) Where it is proved that the contravention of the provisions in question was due to the act or default of some person other than the defendant, being an act or default which took place in Scotland or Northern Ireland, the court shall (whether or not the defendant is acquitted) cause notice of the proceedings to be sent to the Minister.

102 Warranty pleaded as defence

- (1) In any proceedings for an offence under this Act, or any regulations made under this Act, being an offence consisting of selling, or offering, exposing or advertising for sale, or having in possession for the purpose of sale, any article or substance, it is a defence for the defendant to prove—
 - (a) that he purchased it as being an article or substance which could lawfully be sold or otherwise dealt with as mentioned above, or, as the case may be, could lawfully be so sold or dealt with under the name or description or for the purpose under or for which he sold or dealt with it, and with a written warranty to that effect; and
 - (b) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise; and
 - (c) that it was then in the same state as when he purchased it
- (2) A warranty is only a defence in proceedings under this Act if—
 - (a) the defendant—
 - (i) has, not later than three clear days before the date of the hearing, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it and
 - (ii) has also sent a like notice of his intention to that person, and
 - (b) in the case of a warranty given by a person resident out side the United Kingdom, the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained in it and
 - (c) in the case of a prosecution in respect of a sample of milk procured from him, the defendant either—
 - (i) has within 60 hours after the sample was procured served such a notice as is mentioned in paragraph 12 of Schedule 7, or
 - (ii) not having served such a notice, proves that he had reasonable cause to believe that such a notice would have been of no effect by reason of the fact that the milk in question was a mixture of milk produced on more than one dairy farm.
- (3) Where the defendant is a servant of the person who purchased the article or substance under a warranty, he shall be entitled to rely on the provisions of this section in the same way as his employer would have been entitled to do if he had been the defendant
- (4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit adjourn the hearing to enable him to do so.
- (5) For the purposes of this section and section 103, a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that name or description by any person without contravening any of the provisions of this Act or of regulations made under this Act

103 Offences as to warranties and analysis certificates

- (1) A defendant who in any proceedings under this Act wilfully applies to any article or substance a warranty or certificate of analysis given in relation to any other article or substance is guilty of an offence.

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- (2) A person who—
- (a) sells an article or substance in respect of which a warranty might be pleaded under section 102, and
 - (b) gives to the purchaser a false warranty in writing in respect of that article or substance,
- is guilty of an offence, unless he proves that when he gave the warranty he had reason to believe that the statements or description contained in it were accurate.
- (3) Where the defendant in a prosecution under this Act relies successfully on a warranty given to him or to his employer, any proceedings under subsection (2) in respect of the warranty may at the prosecutor's option be taken either—
- (a) before a court having jurisdiction in the place where a sample of the article or substance to which the warranty relates was procured; or
 - (b) before a court having jurisdiction in the place where the warranty was given.