

*These notes refer to the Food Standards Act 1999 (c.28)  
which received Royal Assent on 11 November 1999*

# FOOD STANDARDS ACT 1999

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part III: Other functions

178. *Paragraph 15*: Section 4 of the Medicines Act 1968 provides for the establishment of committees to advise on various aspects of the licensing of medicines (including veterinary medicines). *Subparagraph (2)* amends this provision to provide for the Agency to nominate a member of any committee established under it dealing with veterinary medicinal products for appointment by the Secretary of State.
179. This provision will in practice apply to the Veterinary Products Committee, which considers applications for authorisation of new veterinary medicines and related products. (It should be noted that, as with the Advisory Committee on Pesticides, it is expected that the Agency will also provide an adviser to this committee and its sub-committee.)
180. Section 129 of the Medicines Act 1968 provides the general procedure for the making of regulations and orders under that Act. *Subparagraph (3)* amends section 129 to specify that the Agency must be consulted on any new regulations concerning veterinary drugs or medicated feedingstuffs.
181. *Paragraph 16, subparagraphs (1) and (2)* set out the Agency's functions in relation to emergency control orders made under the Food and Environment Protection Act 1985 (FEPA 1985), conferred by amendments to sections 2 and 3 of that Act. Consequential amendments are set out in more detail in Schedule 5.
182. *Subparagraphs (3) to (5)* amend Parts II and III of FEPA 1985, which relate respectively to the licensing of deposits at sea and of pesticides. The amendments introduce a requirement for the Agency to be consulted on licensing matters under Part II (dumping at sea), and a more general requirement for consultation of the Agency on matters covered by Part III (pesticides).
183. Powers are available under Part II of the Food and Environment Protection Act 1985 for Ministers to license the deposit of substances and articles in the sea and the loading of vessels with materials destined for incineration at sea. For these purposes, 'licensing authority' means the Minister of Agriculture, Fisheries and Food and the Secretary of State (in practice the Secretary of State for the Environment, Transport and the Regions) acting jointly in relation to England and Wales; and the Scottish Ministers in relation to Scotland. They may also make orders which specify types of operation which do not need a licence or which specify the conditions under which they may be exempt.
184. The purpose of such powers is primarily to protect the marine environment and to prevent interference with legitimate uses of the sea, and it is proposed that the powers should remain with Ministers as defined. However, in view of the potential effects of dumping at sea on the safety of food obtained from it, subparagraph (3) amends the powers to grant exemption from the requirement for licences to require that the Agency

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be consulted before any exemptions are made or conditions for exemptions set down in law.

185. *Subparagraph (4)* requires the licensing authority to consult on specific applications and on the general way in which food safety should be addressed when considering licence applications. The licensing authority is obliged to take the Agency's advice into account.
186. Part III of FEPA 1985 concerns the licensing of pesticides and related products for the purposes of protecting human, animal and plant health, safeguarding the environment and securing safe, efficient and humane methods of controlling pests. Primary responsibility for such licensing lies with Agriculture, Health and Environment Ministers. Section 16 of the Act relates to the requirement on Ministers to consult the Advisory Committee on Pesticides (ACP) on proposals:
  - for regulations;
  - for giving, revoking or suspending approvals of pesticide products;
  - for conditions to which they are considering making approvals subject.
187. *Subparagraph (5)* amends this provision to require Ministers to consult the Agency as well as the ACP on proposals for regulations, and from time to time on the general policy towards pesticides approvals. These are similar to the provisions concerning veterinary products outlined in the notes to section 29 and Schedule 3, paragraph 15 above.
188. In practice, the amendment means that the Agency will be formally consulted by officials from the Pesticides Safety Directorate on policy advice that they intend to submit to Ministers on any of the above three matters. It will also be achieved through the provision by the Agency of an assessor to the ACP and its sub-committee (the assessor's duty is to contribute to the assessment and authorisation of pesticides). This supplements the provision in *subparagraph (6)* below.
189. *Subparagraph (6)* amends FEPA 1985 to provide for the Agency to nominate a member of the Advisory Committee on Pesticides.
190. *Paragraphs 17 and 18* amend Part VI of the Environmental Protection Act 1990 (EPA 1990), which is concerned with preventing or minimising any damage to the environment which may result from the escape or release of genetically modified organisms (GMOs). Lead responsibility for this area of policy lies with the Secretary of State for the Environment, Transport and the Regions. However, the Secretary of State for Health could (through normal machinery of government arrangements) take part in the decision-making process where appropriate.
191. The amendments are designed to give the Agency a role in relation to regulations controlling the import, acquisition, release or marketing of any GMO and related matters. Paragraph 17 provides a new option allowing such regulations to specify that the Agency may act jointly with the Secretary of State in addition to the Secretary of State acting alone in considering any exemptions from the risk assessment or notification requirements for the matters mentioned above (section 108(7)) and exempting from the consent requirements relating to the same actions (section 111(7)).
192. *Paragraph 18* modifies section 126 of the EPA 1990, which provides more generally for regulations under Part VI to be made jointly by the Secretary of State and the Minister of Agriculture, Fisheries and Food, where the regulations concern any matter with which the latter is concerned. The amendment made by this section does not alter this requirement, since MAFF will retain an interest in the economic and environmental implications of GMOs for the farming and food industries after the Agency comes into being.
193. It does however introduce mechanisms to ensure that the Agency can exercise the same degree of influence as MAFF does now. In particular, the Agency must be consulted

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before any regulations on the deliberate release of GMOs are made where these relate to matters with which the Agency is concerned.

194. The amendment to section 126 would have the following effect.
- *Subsection (1)* of this new section continues the Minister of Agriculture, Fisheries and Food's role in relation to regulations under Part VI of the EPA 1990. It does however exclude him from the power to make regulations relating to fees and charges under section 113 of that Act (but see subsection (6) below).
  - *Subsection (2)* preserves the Minister of Agriculture, Fisheries and Food's role in all the functions under Part VI (other than the power to make regulations, which is dealt with under subparagraph (1) above).
  - *Subsection (3)* applies in relation to the powers (other than powers to make regulations):
    - under section 108(8), to require certain persons to apply for authorisation to release, market, import or acquire GMOs;
    - under section 110, to prohibit certain persons from releasing, marketing, importing or acquiring GMOs if it is believed they risk damaging the environment.
  - The effect of the amendment is that these powers must now be exercised jointly by the Secretary of State, the Agency, in relation to matters connected with food safety and other interests of consumers in relation to food, and the Minister of Agriculture, Fisheries and Food where he is also concerned with the matter in question.
  - *Subsection (5)* introduces a new requirement for the Agency to be consulted:
    - before any regulations under Part VI of EPA 1990 are made, other than regulations relating to fees and charges under section 113;
    - before any consent relating to deliberate releases is issued (under section 111) or the conditions and limitations on the granting of a consent are varied (under section 112).
  - *Subsection (6)* requires the Secretary of State to take account of costs incurred by the Minister of Agriculture, Fisheries and Food and the Agency in drawing up charging scheme under section 113 of the EPA 1990.
  - *Subsection (7)* qualifies the subsections of this section that deal with joint action and consultation. Essentially, it provides that any regulatory power or function exercised under this subsection is not rendered invalid if there is subsequently any question as to whether it should have been done (or not done) jointly with the Minister of Agriculture, Fisheries and Food or the Agency (or both), rather than by the Secretary of State acting alone.
195. *Paragraphs 19* and *20* amend the Genetically Modified Organisms (Northern Ireland) Order 1991 to make corresponding provision for Northern Ireland to that made by the amendments to the Environment Protection Act 1990 in paragraphs 17 and 18.
196. *Paragraph 21* sets out the Agency's right to be consulted on authorisations to dispose of radioactive waste. The detailed amendments to the Radioactive Substances Act 1993 are made in Schedule 5.

***Schedule 4: Accounts and audit***

197. This Schedule sets out the arrangements for the Agency's accounts and audit.
198. As a UK Government department, the Agency will automatically be subject to the requirements of the Exchequer and Audit Departments Acts, under which it is required

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to produce appropriation accounts for Parliament in respect of monies voted to it by Parliament, which are audited by the Comptroller and Auditor General. However, section 39 of the Act provides for the Agency to receive money not only from Parliament but also from the Scottish Parliament, National Assembly for Wales, and Northern Ireland Assembly. The Agency must be able to account to those bodies for the expenditure of the money provided by them, and as this is not covered by existing legislation, specific provision is made here. In addition, section 35 states that the Agency is to be treated as a cross border public authority for the purposes of section 70(6) of the Scotland Act 1998. This means that the arrangements for accounting to the Scottish Parliament may not be made in Scottish legislation, and therefore provisions are included here for accounts to be made to the Scottish Parliament.

199. *Paragraph 1* defines the relevant authorities and bodies with an interest in the Agency's accounts (i.e. the devolved administrations and the Treasury, and the devolved legislatures and the House of Commons).
200. *Paragraph 2* states that copies of the appropriation accounts, which the Agency is already required to produce for Parliament by virtue of the Exchequer and Audit Departments Act 1866, must be sent to the relevant authorities for Wales, Scotland and Northern Ireland, who will present them to the Scottish Parliament and the Northern Ireland Assembly as the case may be. This is so that they are informed of the overall financial position of the Agency – final scrutiny of the appropriation accounts remains the task of the House of Commons, through the Public Accounts Committee.
201. *Paragraph 3* deals with the Agency's accounts for the expenditure of the sums provided by the devolved authorities in accordance with section 39 of the Act (this includes income from statutory charges imposed in their areas). The relevant authority for each of the parts of the UK may direct the form of the accounts for their part of the UK but must first consult the Agency and the other relevant authorities. The purpose of this is to achieve consistency between the form of accounts provided to each body, thereby assisting in the preparation of the consolidated accounts (see below). The accounts will be audited on behalf of each of the devolved legislatures by the Comptroller and Auditor General. Audited accounts must be sent to the relevant authority whose money they concern, which will present them to its legislature for scrutiny. Copies of the accounts are sent to the other devolved authorities and the Treasury, and these bodies must present them to the other legislatures and the House of Commons, essentially for information.
202. *Paragraph 4* provides for consolidated accounts to be prepared in a form directed by the Treasury after consulting the Agency and other relevant authorities, and send them to the Comptroller and Auditor General to be audited and laid before the House of Commons. The consolidated accounts will bring together into a single document all the parts of the UK Agency's accounts in order to give Parliament a view of its overall financial position. Again, copies of the accounts are sent to the devolved authorities for presentation to the devolved legislatures for information.
203. *Paragraph 5* deals with trading accounts produced under section 5 of the Exchequer and Audit Departments Act 1921. So far as the Agency is concerned, it is envisaged that this provision will be the basis for the separate Meat Hygiene Service accounts. Since the Meat Hygiene Service will operate across GB, the Treasury is required to seek the consent of the other relevant authorities and consult the Agency before directing the form of these accounts. However, it is not necessary to seek the consent of any relevant authority not affected by the operations in question (i.e. Northern Ireland is not involved since the MHS does not operate in Northern Ireland).
204. *Paragraph 6* ensures that the Comptroller and Auditor General has the power to make reports to the devolved bodies for the purposes of value for money audit under the National Audit Act 1983.

***Schedule 5: Minor and Consequential Amendments***

205. This Schedule makes minor amendments to other legislation which are a consequence of the creation and new responsibilities of the Agency, and also to provide for the functions of the Agency provided in Schedule 3.
206. *Paragraphs 1 and 2* amend the relevant legislation on agricultural statistics that applies in Northern Ireland and Scotland, and has the same purpose as *paragraph 5* (see below).
207. *Paragraph 3* amends the Parliamentary Commissioner Act 1967 by adding the Food Standards Agency to the list of bodies subject to the jurisdiction of the Parliamentary Commissioner for Administration.
208. *Paragraph 4* amends the Trades Descriptions Act 1968. Orders made under that Act concerning food or feedingstuffs will in future be made jointly by the President of the Board of Trade, the Secretary of State for Health (rather than the Minister of Agriculture, Fisheries and Food), and the Scottish, Welsh and Northern Ireland Ministers if appropriate. The Agency will also be consulted. In practice, this provision is likely to be used only rarely since these provisions are largely duplicated by powers in the Food Safety Act 1990 and the Agriculture Act 1970.
209. *Paragraph 5* provides that information on agricultural holdings obtained for the purposes of compiling the agricultural and horticultural census in England and Wales may, at the discretion of the Minister of Agriculture, Fisheries and Food, be disclosed to the Agency for purposes connected with carrying out its functions. This would allow the Agency, as a non-Ministerial government department, to be treated in the same way as Ministerial government departments, to which disclosure is currently possible under section 3(1) of the Agricultural Statistics Act 1979.
210. The Agency would use information obtained in this way to assist it in planning food safety surveys on farms (in preparing for a survey of the presence of salmonella in poultry, for example, it would need to know where poultry breeding took place). The information would also assist the Agency in considering applications for industrial discharge authorisations, on which it will be a statutory consultee, as well as in dealing with emergency contamination incidents. In practice, the Agency is likely to use such data infrequently and on a limited scale.
211. *Paragraph 6* amends the Food and Environment Protection Act 1985 (FEPA 1985) Part I.. It takes account of the changes already made to FEPA 1985 by the *Scotland Act 1998 (Modification of Functions) Order 1999 (SI 1756)*, which made textual changes to facilitate the transfer of relevant functions to Scottish Ministers. As a consequence of these changes it is necessary for subparagraphs (2) and (5) to come into force on the coming into force of this Act. These preserve the role of the Secretary of State for Health in England and Wales, and the Department of Agriculture in Northern Ireland, to make emergency orders (in Scotland this function has transferred to Scottish Ministers). On coming into force of the rest of the Act, references to the Minister of Agriculture, Fisheries and Food are removed, so the functions in Part I of FEPA 1985 may only be exercised by the Secretary of State (or the Department of Health and Social Services in Northern Ireland).
212. *Paragraphs 7, 8 and 10-21* amend the Food Safety Act 1990, removing references to the Minister of Agriculture, Fisheries and Food. They also provide for the powers described in Part I of Schedule 3 to be exercised by the Agency itself.
213. *Paragraphs 9 and 22* concern the Isles of Scilly. Due to the slightly anomalous position of the Scilly Isles in the local government structure, the 1990 Act provided that its application to the Isles could be subject to such exceptions and modifications as Ministers may direct. In practice however, the only modification which has been necessary is to provide for the council of the Isles of Scilly to be the enforcement authority in the Isles. This has now been made explicit by amendment to s 5 of the

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1990 Act (Schedule 5 paragraph 7), so s 57(1) is no longer necessary and ceases to have effect (paragraph 22).

214. *Paragraph 10* amends section 6 (enforcement) of the Food Safety Act 1990. It provides for the Secretary of State to direct that a duty imposed on an enforcement body under the Act should instead be discharged by himself or by the Minister of Agriculture, Fisheries and Food or by the Agency. It also provides for the Agency to be one of the bodies which may be named as an enforcement body in regulations made under section 6 of the 1990 Act (it is envisaged that this power will be used for instance in relation to the Meat Hygiene Service, which will become part of the Food Standards Agency). Amendments also provide for the Secretary of State to take over a prosecution begun by another person under the Food Safety Act 1990 (this replaces a similar provision in the current Act) or for the Agency to take over such proceedings with the consent of that person or at the direction of the Secretary of State.
215. *Paragraph 11* amends section 13 of the Food Safety Act 1990 (emergency control orders). Power to make emergency control orders transfers to the Secretary of State, although this may be delegated to the Agency under section 17 of this Act. The amendments in paragraph 9 allow either the Agency or the Secretary of State to consent to exemptions, give directions to prevent food subject to an order being used commercially, and to recover costs from persons failing to comply with an order.
216. *Paragraph 16* concerns offences by Scottish partnerships. Section 36 of the Food Safety Act 1990 provides that, where an offence under the Act committed by a body corporate is proved to have been committed with the consent or connivance of (or be attributable to any neglect on the part of) a director, manager, secretary or similar office holder of the body, or by a person purporting to act in such a capacity, that person (as well as the body corporate) is deemed guilty of the offence. It has been held that in Scotland the words “body corporate” include a partnership which in Scots law has an identity separate from that of the individual partners. This section adds a new Section 36A to provide that individual partners may be charged along with the partnership in respect of any offence committed under the Act.
217. *Paragraph 17* amends section 40 of the Food Safety Act 1990 in the following ways. *Subparagraph (2)* inserts a new subsection (1A) to give the Agency power, after consulting the Secretary of State, to issue a direction to a local authority to ensure that it complies with a statutory code of practice issued under Section 40. *Subparagraph (3)* amends section 40(2)(b) to require local authorities to comply with a direction of the Agency, but the power of Ministers to direct is removed. *Subparagraph (4)* amends section 40(3) so that the Agency rather than Ministers can obtain a court order forcing a local authority to take appropriate action where it fails to comply with a direction but it must consult the Secretary of State before doing so. *Subparagraphs (5) and (6)* amend section 40(4) of the Food Safety Act, concerning consultation of interested parties before issuing codes of practice. The Secretary of State is required to have regard to the Agency’s advice on these matters. The requirement to consult relevant organisations is retained, although consultation carried out by the Agency may be taken as meeting this obligation.
218. *Paragraph 18* amends section 41 of the Food Safety Act 1990 by removing from the Minister of Agriculture, Fisheries and Food the power to require local authorities to provide information that is relevant to their enforcement work carried out under the Act and assigns that power to the Agency.
219. *Paragraph 19* amends section 42 of the Food Safety Act 1990 by empowering the Secretary of State to direct the Agency (as an alternative to designating another local authority) to carry out the enforcement functions of a local authority that has failed to meet its enforcement obligations.
220. *Paragraph 20* amends section 45 of the Food Safety Act. Shortly after the enactment of the 1990 Act, the Parliamentary Joint Committee on Statutory Instruments expressed

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some doubt as to whether section 45 allowed for charges to be imposed on application for a licence, rather than on its granting. This amendment makes it clear that section 45 enables Ministers to provide for charges to be imposed on application (for example, for a licence) and not just on completion of a transaction.

221. *Paragraph 21* makes amendments to section 48 of the Food Safety Act 1990, concerning consultation before legislation is made under that Act by the Secretary of State. These are similar in effect to those described in paragraph 17(5) and (6) above.
222. Schedule 1 to the Food Safety Act 1990 supplements the subject areas in which regulations may be made by Ministers under section 16 of that Act. *Paragraph 23* provides additionally for regulations to control substances and activities relating to the farm production of food sources\* which may have an impact on food safety or otherwise affect the interests of consumers in relation to food. The effect of this amendment is therefore to extend the scope of the Food Safety Act 1990 to cover the whole of the primary production end of the food chain. However, these powers will normally be used in relation to on-farm activity only where existing powers available to, for example, Agriculture or Environment Ministers are unavailable or insufficient.
  - *Food source* is defined in the Food Safety Act 1990 (section 3) as any growing crop or live animal, bird or fish from which food is intended to be derived (whether by harvesting, slaughtering, milking, collecting eggs or otherwise).
223. *Paragraph 25* revokes any byelaws made (or having effect as if made) under section 15 of the Food Act 1984 and which were continued in force under the Food Safety Act 1990. That Act abolished the power to make food byelaws, subject to a provision which saved those in force immediately before the Act came into force. Byelaws related to miscellaneous matters are no longer needed in view of the current legal provisions for food safety and standards.
224. *Paragraphs 26 to 42* make minor or consequential amendments to the Food Safety (Northern Ireland) Order 1991 broadly similar to the amendments made to the Food Safety Act 1990 by paragraphs 7 to 25.
225. *Paragraph 43* amends provisions of the Radioactive Substances Act 1993 (RSA 1993) to make the Agency the statutory consultee of the Environment Agency (EA) and the Scottish Environment Protection Agency (SEPA) on authorisations to dispose of radioactive waste, as well as on the revocation and variation of such authorisations. This will enable the Agency to influence the control of an important potential hazard to food safety. The Agency will replace the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales in these roles as far as England and Wales are concerned and the Secretary of State for Scotland in relation to authorisations issued by SEPA.
226. *Subparagraph (2)* amends the relevant provisions of RSA 1993 to make the Agency the statutory consultee on authorisations in place of Ministers.
227. *Subparagraph (3)* does the same in respect of the revocation and variation of authorisations.
228. *Subparagraphs (4) and (6)* remove references to the Minister of Agriculture, Fisheries and Food from those parts of the RSA 1993 where he no longer has a function.
229. *Subparagraph (5)* amends section 25 of RSA 1993. That section allows the Secretary of State for the Environment, Transport and the Regions to restrict access to information in applications under the Act on grounds of national security. The section (prior to the amendment made by this Act) makes it clear that this power did not release the EA or SEPA from their duty to consult Ministers on applications for discharges and did not apply to any information sent by the EA or SEPA to Ministers. The amendment made by this paragraph simply relates the provision to the Agency rather than to Ministers, to ensure that the Agency is able properly to exercise the consultation function given to it by subsections (2) and (3).

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230. Before setting charges in relation to licence applications, including those under the RSA 1993, the Environment Agencies are currently obliged to take into account the costs and expenses of the Minister of Agriculture, Fisheries and Food and certain of those of the Scottish and Welsh administrations (i.e. those performed by the Scottish and Welsh administrations which would be performed by the Minister of Agriculture, Fisheries and Food in England). The Minister's and Secretary of State's functions under the RSA 1993 are being transferred to the Agency, and, accordingly, the amendments to Environment Act 1995 made in *paragraph 44* specify that it is the Agency's costs and expenses that must be taken into account.
231. As the Minister of Agriculture, Fisheries and Food will no longer have responsibilities in this area *subparagraph (4)* removes the need for that Minister to approve any relevant charging proposals.
232. Fees charged by the Environment Agencies for licences may include an element to meet the costs incurred by the Agency. *Subparagraphs (5) and (6)* allow for these sums to be transferred from the Environment Agency to the Agency after collection.
233. *Paragraph 45* amends Schedule 5 of the Government of Wales Act 1998 to add the Agency, and its advisory committee for Wales, to the list of bodies whose members and staff can be required to attend or produce documents for the National Assembly for Wales.