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STATUTORY INSTRUMENTS

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**1991 No. 762**

**The Food Safety (Northern Ireland) Order 1991**

**PART IV**

**MISCELLANEOUS AND SUPPLEMENTAL**

*Powers of Department*

**Power to issue codes of practice**

**39.**—(1) For the guidance of district councils,<sup>[F1]</sup> the Department] may issue codes of recommended practice as regards the execution and enforcement of this Order and of regulations and orders made under it; and any such code shall be laid before the Assembly after being issued.

<sup>[F1]</sup>(1A) The Food Standards Agency may, after consulting the Department, give a district council a direction requiring the council to take any specified steps in order to comply with a code under this Article.]

(2) In the exercise of the functions conferred on district councils by or under this Order, every district council—

- (a) shall have regard to any relevant provision of any such code; and
- (b) shall comply with any direction which is given<sup>[F1]</sup> under this Article and] requires the council to take any specified steps in order to comply with such a code.

(3) Any direction under<sup>[F1]</sup> paragraph (1A)] shall, on the application of<sup>[F1]</sup> the Food Standards Agency], be enforceable by mandamus.

<sup>[F1]</sup>(3A) The Food Standards Agency shall consult the Department before making an application under paragraph (3).]

(4) Before issuing any code under this Article,<sup>[F1]</sup> the Department] shall

<sup>[F1]</sup>(a) <sup>[F2]</sup>Subject to paragraph (4B),] consult with such organisations as appear to<sup>[F1]</sup> the Department] to be representative of interests likely to be substantially affected by the code<sup>[F1]</sup>; and]

<sup>[F1]</sup>(b) have regard to any relevant advice given by the Food Standards Agency]

<sup>[F1]</sup>(4A) If it appears to the Department that the Food Standards Agency has undertaken any consultation with an organisation that the Department is required to consult under paragraph (4), the Department may treat that consultation as being as effective for the purposes of that paragraph as if undertaken by the Department.]

<sup>[F2]</sup>(4B) Paragraph (4)(a) shall not apply in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.]

(5) Any consultation undertaken before paragraph (4) comes into operation shall be as effective, for the purposes of that paragraph, as if undertaken after that paragraph comes into operation.

F1 1999 c. 28  
F2 SR 2004/482

### Power to require returns

40. Every district council shall send to the Department<sup>[F3]</sup> or the Food Standards Agency] such reports and returns, and give to the Department<sup>[F3]</sup> or the Food Standards Agency] such information, with respect to the exercise of the functions conferred on district councils by or under this Order, as the Department<sup>[F3]</sup> or the Food Standards Agency] may require.

F3 1999 c. 28

### Default powers

41.—(1) Where<sup>[F4]</sup> the Department] is satisfied that—

- (a) a district council (in this Article referred to as “the council in default”) have failed to discharge any functions conferred by or under this Order; and
- (b) the council's failure affects the general interests of consumers of food,

<sup>[F4]</sup>the Department] may, by order, empower<sup>[F4]</sup> the Food Standards Agency or] an officer of<sup>[F4]</sup> the Department] to exercise, or procure the exercise of, that function in place of the council in default.

(2) For the purpose of determining whether the power conferred by paragraph (1) is exercisable,<sup>[F4]</sup> the Department] may cause a local inquiry to be held.

(3) <sup>[F4]</sup>The Department] may recover from the council in default any expenses reasonably incurred by it under paragraph (1); and for the purpose of paying any such amount the council in default may—

- (a) raise money as if the expenses had been incurred directly by it as a district council; and
- (b) if and to the extent that they are authorised to do so by<sup>[F4]</sup> the Department], borrow money in accordance with the statutory provisions relating to borrowing by a district council.

F4 1999 c. 28

### *Protective provisions*

### Continuance of registration or licence on death

42.—(1) This Article shall have effect on the death of any person who—

- (a) is registered in respect of any premises in accordance with regulations made under Part II; or
- (b) holds a licence issued in accordance with regulations so made.

(2) The registration or licence shall subsist for the benefit of<sup>[F5]</sup> the deceased's personal representative, or widow or widower or surviving civil partner or any other member of the deceased's family, until the expiration of—]

<sup>[F5]</sup>(a) <sup>[F5]</sup>the period of 3 months from the date of the deceased's death]; or

- (b) such longer period as the district council or, as the case may be,<sup>[F6]</sup> the Food Standards Agency or] the Department of Agriculture may allow.

- F5 2004 c.33
- F6 1999 c. 28

### Protection of public analyst acting in good faith

43. A public analyst appointed by a district council shall be treated for the purposes of section 48 of the Local Government Act (Northern Ireland) 1972<sup>F7</sup> as being an officer of the council, whether or not his appointment is a whole-time appointment.

- F7 1972 c. 9 (NI)

#### Modifications etc. (not altering text)

- C1 Art. 43 applied (with modifications) (1.3.2007) by Quick-frozen Foodstuffs Regulations (Northern Ireland) 2007 (S.R. 2007/65), **reg. 10(j)**
- C2 Art. 43 applied (with modifications) (5.11.2007) by Plastic Materials and Articles in Contact with Food (Lid Gaskets) Regulations (Northern Ireland) 2007 (S.R. 2007/419), **reg. 10(c)**
- C3 Art. 43 applied (31.10.2007) by Natural Mineral Water, Spring Water and Bottled Drinking Water Regulations (Northern Ireland) 2007 (S.R. 2007/420), **reg. 22(1)(k)** (with reg. 3)
- C4 Art. 43 applied (with modifications) (5.11.2007) by Materials and Articles in Contact with Food Regulations (Northern Ireland) 2007 (S.R. 2007/434), **regs. 1(2), 20(1)(d)**
- C5 Art. 43 applied (with modifications) (11.1.2008) by Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007 (S.R. 2007/506), **reg. 29(i)**
- C6 Art. 43 applied (with modifications) (14.4.2008) by Eggs and Chicks Regulations (Northern Ireland) 2008 (S.R. 2008/98), **reg. 20**
- C7 Art. 43 applied (with modifications) (22.12.2008) by Eggs and Chicks (No. 2) Regulations (Northern Ireland) 2008 (S.R. 2008/451), **reg. 20**
- C8 Art. 43 applied (with modifications) (28.4.2010) by Eggs and Chicks Regulations (Northern Ireland) 2010 (S.R. 2010/125), **reg. 29**
- C9 Art. 43 applied (31.3.2016) by The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations (Northern Ireland) 2016 (S.R. 2016/54), **regs. 1, 32(1)(h)**

### *Financial provisions*

#### Regulations as to charges

44.—(1) Regulations may require or authorise charges to be imposed by district councils or, as the case may be,<sup>F8</sup> the Food Standards Agency or] the Department of Agriculture in respect of things done<sup>F8</sup> or to be done] by those councils<sup>F8</sup> or the Food Standards Agency] or that Department which are required or authorised by or under this Order.

(2) Regulations under this Article may include such provision as<sup>F8</sup> the Department] sees fit as regards charges for which the regulations provide and the recovery of such charges; and nothing in paragraphs (3) and (4) shall prejudice this.

(3) Regulations under this Article may provide that the amount of a charge (if imposed) is to be at the discretion of the district council or, as the case may be,<sup>F8</sup> the Food Standards Agency or] the Department of Agriculture or to be at its discretion subject to a maximum or a minimum.

(4) Regulations under this Article providing that a charge may not exceed a maximum amount, or be less than a minimum amount, may prescribe, as regards any amount, a sum or a method of calculating the amount.

F8 1999 c. 28

### Expenses of authorised officers

45. Any expenses which are incurred under this Order by an authorised officer in procuring samples, and causing samples to be analysed or examined, shall be defrayed by the district council or, as the case may be,<sup>F9</sup> the Food Standards Agency or] the Department of Agriculture.

F9 1999 c. 28

#### Modifications etc. (not altering text)

- C10** Art. 45 applied (with modifications) (14.4.2008) by [Eggs and Chicks Regulations \(Northern Ireland\) 2008 \(S.R. 2008/98\)](#), **reg. 20**
- C11** Art. 45 applied (with modifications) (22.12.2008) by [Eggs and Chicks \(No. 2\) Regulations \(Northern Ireland\) 2008 \(S.R. 2008/451\)](#), **reg. 20**
- C12** Art. 45 applied (with modifications) (28.4.2010) by [Eggs and Chicks Regulations \(Northern Ireland\) 2010 \(S.R. 2010/125\)](#), **reg. 29**
- C13** Art. 45 applied (with modifications) (14.10.2011) by [Poultrymeat Regulations \(Northern Ireland\) 2011 \(S.R. 2011/315\)](#), **reg. 26(1)(d)(2)**

*Art. 46 rep. by 1996 NI 12*

### Supplemental

### Regulations and orders

47.—(1) Nothing in this Order shall authorise<sup>F10</sup> the Department] to make provision by order or regulations for prohibiting or regulating the carrying out of any commercial operation in relation to any food or contact material in so far as it relates to importation except where such provision is made with a view to the prevention of disease (including the protection of human health) or is made with respect to services in connection with, or the regulation of, the quality, transport, marketing or identification of food or contact material.

(2) Any power of<sup>F10</sup> the Department] to make regulations or an order under this Order includes power—

- (a) to apply, with modifications and adaptations, any other statutory provision (including one contained in this Order) which deals with matters similar to those being dealt with by the regulations or order; and
  - (b) to provide for such exceptions, limitations and conditions, and to make such supplementary, incidental, consequential or transitional provisions, as<sup>F10</sup> the Department] considers necessary or expedient.
- (3) <sup>F11</sup>Subject to paragraph (3C),] before making—
- (a) any regulations under this Order, other than regulations under Article 16(2); or
  - (b) any order under Part I,

<sup>F10</sup>the Department] shall consult with such organisations as appear to<sup>F10</sup> the Department] to be representative of interests likely to be substantially affected by the regulations or order.

<sup>F10</sup>(3A) Before making any regulations or order under this Order, the Department shall have regard to any relevant advice given by the Food Standards Agency.

(3B) If it appears to the Department that the Food Standards Agency has undertaken any consultation with an organisation that the Department is required to consult under paragraph (3), the Department may treat that consultation as being as effective for the purposes of that paragraph as if undertaken by the Department.]

[<sup>F11</sup>(3C) Paragraph (3) shall not apply in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.]

(4) Any consultation undertaken before paragraph (3) comes into operation shall be as effective, for the purposes of that paragraph, as if undertaken after that paragraph comes into operation.

**F10** 1999 c. 28

**F11** SR 2004/482

### Form and authentication of documents

48.—(1) The following shall be in writing, namely—

- (a) all documents authorised or required by or under this Order to be given, made or issued by a district council or the Department of Agriculture; and
- (b) all notices and applications authorised or required by or under this Order to be given or made to, or to any authorised officer of, a district council or the Department of Agriculture.

(2) Regulations may prescribe the form of, and the manner of authentication (if any) of, any document to be used for any of the purposes of this Order and, if forms are so prescribed, those forms or forms to the like effect may be used in all cases to which those forms are applicable.

### Application to Crown

49.—(1) Subject to the provisions of this Article, the provisions of this Order and of regulations and orders made under it shall bind the Crown including the Crown in right of Her Majesty's Government in the United Kingdom.

(2) No contravention by the Crown of any provision of this Order or of any regulations or order made under it shall make the Crown criminally liable; but the High Court may, on the application of the Department of Agriculture or, as the case may be, [<sup>F12</sup> the Food Standards Agency or] a district council, declare unlawful any act or omission of the Crown which constitutes such a contravention.

(3) Notwithstanding anything in paragraph (2), the provisions of this Order and of regulations and orders made under it shall apply to persons in the public service of the Crown as they apply to other persons.

(4) If the Secretary of State certifies that it appears to him requisite or expedient in the interests of national security that the powers of entry conferred by Article 33 should not be exercisable in relation to any Crown premises specified in the certificate, those powers shall not be exercisable in relation to those premises; and in this paragraph “Crown premises” means premises held or used by or on behalf of the Crown.

**F12** 1999 c. 28

### Water supply

50.—(1) Nothing in Part II or in any order or regulations made under that Part shall apply in relation to the supply of water to any premises, whether by [<sup>F13</sup> a water undertaker or by means of a private supply within the meaning of Part IV of the Water and Sewerage Services (Northern Ireland) Order 2006].

(2) <sup>F14</sup> .....

- F13** Words in art. 50(1) substituted (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(1), **Sch. 12 para 28** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with transitional, transitory and saving provisions in art. 3, Sch. 2)
- F14** Art. 50(2) repealed (1.4.2007) by Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21)), arts. 1(2), 308(2), **Sch. 13** (with arts. 8(8), 121(3), 307); S.R. 2007/194, **art. 2(2)**, Sch. 1 Pt. II (with transitional, transitory and saving provisions in art. 3, Sch. 2)

### Amendments, transitional provisions, savings and repeals

#### Para. (1)—Amendments

(2) Without prejudice to section 17(2) of the Interpretation Act (Northern Ireland) 1954,<sup>F15</sup> an order may make such modifications of instruments made under statutory provisions as appear to<sup>F16</sup> the Department] to be necessary or expedient in consequence of the provisions of this Order; and in this paragraph “instruments” has the meaning assigned to it by section 1(c) of that Act of 1954.

(3) The transitional provisions and savings in Schedule 3 shall have effect for the purposes of this Order.

#### Para. (4)—Repeals

- F15** 1954 c. 33 (NI)  
**F16** 1999 c. 28

**Changes to legislation:**

There are currently no known outstanding effects for the The Food Safety (Northern Ireland) Order 1991, PART IV.