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STATUTORY INSTRUMENTS

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**1991 No. 762**

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

**PART I**

**INTRODUCTORY**

**Title and commencement**

1.—(1) This Order may be cited as the Food Safety (Northern Ireland) Order 1991.

(2) Subject to paragraph (3), this Order shall come into operation on such day or days as the Head of the Department may by order appoint.

(3) This Article and Articles 2 and 12 shall come into operation on the expiration of 2 months from the day on which the Order is made.

(4) An order under paragraph (2) may contain such transitional and supplementary provisions as appear to the Head of the Department to be necessary or expedient.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954<sup>(1)</sup> shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“advertisement” includes any notice, circular, label, wrapper, invoice or other document, and any public announcement made orally or by any means of producing or transmitting light or sound;

“analysis” includes microbiological assay and any technique for establishing the composition of food;

“animal” means any creature other than a bird or fish;

“article” does not include a live animal or bird, or a live fish which is not used for human consumption while it is alive;

“authorised officer” means—

(a) in the case of functions conferred on a district council, subject to Article 26(5), a person who is generally or specially authorised in writing by that council for the purposes of this Order;

(b) in the case of functions conferred on the Department of Agriculture, a person who is generally or specially authorised in writing by that Department for the purposes of this Order;

“business” includes the undertaking of a canteen, club, school, hospital or institution, whether carried on for profit or not, and any undertaking or activity carried on by a district council or other public authority;

“commercial operation”, in relation to any food or contact material, means any of the following, namely—

- (a) selling, possessing for sale and offering, exposing or advertising for sale;
- (b) consigning, delivering or serving by way of sale;
- (c) preparing for sale or presenting, labelling or wrapping for the purpose of sale;
- (d) storing or transporting for the purpose of sale;
- (e) importing and exporting;

and, in relation to any food source, means deriving food from it for the purpose of sale or for purposes connected with sale;

“contact material” means any article or substance which is intended to come into contact with food;

“container” includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;

“cream” means that part of milk rich in fat which has been separated by skimming or otherwise;

“dairy farm”—

- (a) means any farm on which milk is produced, but
- (b) does not include any part of any such premises on which milk is manufactured into other products;

“the Department” means the Department of Health and Social Services;

“the Department concerned” means—

- (a) except as provided by sub-paragraphs (b) and (c) and by Article 12(8), in the case of all foods, the Department;
- (b) in the case of imported milk or milk in liquid milk plants or dairy farms, the Department of Agriculture;
- (c) in the case of—
  - (i) the control on residues in meat or milk of veterinary drugs and such other substances as may be specified in an order;
  - (ii) the use of novel processes or treatments in the preparation of food;
  - (iii) novel foods, genetically modified food sources, food sources from which novel foods are intended to be derived or foods derived from genetically modified food sources;

the Department and the Department of Agriculture acting jointly;

“description”, in relation to food, includes any description of its origin or of the manner in which it is packed;

“equipment” includes any apparatus;

“examination” means microbiological examination;

“exportation” and “importation” have the same meanings as they have for the purposes of the Customs and Excise Management Act 1979(2);

“fish” includes crustaceans and molluscs;

“food” includes—

- (a) drink;

- (b) articles and substances of no nutritional value which are used for human consumption;
- (c) chewing gum and other products of a like nature and use; and
- (d) articles and substances used as ingredients in the preparation of food or anything falling within this sub-paragraph and sub-paragraphs (a) to (c);

but does not include—

- (i) live animals or birds, or live fish which are not used for human consumption while they are alive;
- (ii) fodder or feeding stuffs for animals, birds or fish;
- (iii) controlled drugs within the meaning of the Misuse of Drugs Act 1971<sup>(3)</sup>; or
- (iv) subject to such exceptions as may be specified in an order—
  - (aa) medicinal products within the meaning of the Medicines Act 1968<sup>(4)</sup> in respect of which product licences within the meaning of that Act are for the time being in force; or
  - (ab) other articles or substances in respect of which such licences are for the time being in force in pursuance of orders under section 104 or 105 of that Act of 1968 (application of Act to other articles and substances);

“food business” means any business in the course of which commercial operations with respect to food or food sources are carried out;

“food premises” means any premises used for the purposes of a food business;

“food source” means 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);

“human consumption” includes use in the preparation of food for human consumption;

“liquid milk plant”—

- (a) includes any premises—
  - (i) in which milk is received, stored, treated, processed and packaged; or
  - (ii) from which milk is supplied or distributed for sale; or
  - (iii) in which milk is kept or used for purposes of sale; or
  - (iv) in which vessels and equipment used for the sale of milk are kept, but
- (b) does not include—
  - (i) any part of any such premises on which milk is manufactured into other products, or
  - (ii) subject to such exceptions as may be specified in an order, premises from which milk is sold by retail;

“milk” includes cream and skimmed or separated milk;

“novel”—

- (a) in relation to food, means any food which has not previously been used for human consumption in Northern Ireland, or has been so used only to a very limited extent;
- (b) in relation to processes or treatments, means any process or treatment which has not previously been used in Northern Ireland, or has been so used only to a very limited extent;

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<sup>(3)</sup> 1971 c. 38

<sup>(4)</sup> 1968 c. 67

“occupier”, in relation to any ship or aircraft of a description specified in an order or any vehicle, stall or place, means the master, commander or other person in charge of the ship, aircraft, vehicle, stall or place;

“officer” includes servant;

“order”, except in Article 1(2), means an order made by the Department concerned subject to negative resolution;

“premises” includes any place, any vehicle, stall or moveable structure and, for such purposes as may be specified in an order, any ship or aircraft of a description so specified;

“preparation”, in relation to food, includes manufacture and any form of processing or treatment, and “preparation for sale” includes, subject to paragraph (3), packaging;

“presentation”, in relation to food, includes the shape, appearance and packaging of the food, the way in which the food is arranged when it is exposed for sale and the setting in which the food is displayed with a view to sale, but does not include any form of labelling or advertising;

“proprietor”, in relation to a food business, means the person by whom that business is carried on;

“public analyst” means a person appointed under Article 27(1);

“regulations”, except in Article 46, means regulations made by the Department concerned subject to negative resolution;

“ship” includes any vessel, boat or craft, and a hovercraft within the meaning of the Hovercraft Act 1968(5), and “master” shall be construed accordingly;

“slaughter-house” means any premises used for the slaughtering of animals, the flesh of which is intended for human consumption;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954(6);

“substance” includes any natural or artificial substance or other matter, whether it is in solid or liquid form or in the form of a gas or vapour;

“treatment”, in relation to any food, includes subjecting it to heat or cold;

“veterinary drugs” has the same meaning as in section 132(1) of the Medicines Act 1968(7).

(3) The reference in paragraph (2) to preparing for sale shall be construed, in relation to any contact material, as a reference to manufacturing or producing for the purpose of sale.

(4) For the purposes of this Order—

- (a) the supply of food, otherwise than on sale, in the course of a business; and
- (b) any other thing which is done with respect to food and is specified in an order,

shall be deemed to be a sale of the food, and references to purchasers and purchasing shall be construed accordingly.

(5) For the purposes of this Order, any class or description may be framed by reference to any matters or circumstances whatever, including in particular, in the case of a description of food, the brand name under which it is commonly sold.

(6) The district of a district council which is bounded by or to seaward of the high-water mark of mean tides shall also include, for the purposes of this Order, the territorial waters of the United Kingdom which are outside that district adjacent to any place where that high-water mark is within or on the boundary of that district.

(5) 1968 c. 59

(6) 1954 c. 33 (N.I.)

(7) 1968 c. 67

(7) The following Table shows provisions defining or otherwise explaining expressions used in this Order (other than provisions defining or explaining an expression used only in the same Article)

emergency control order	Article 12(1)
emergency prohibition notice	Article 11(1)
emergency prohibition order	Article 11(2)
food safety requirements and related expressions	Article 5(2)
improvement notice	Article 9
injury to health and injurious to health	Article 5(1)
prohibition ordersale and related expressionsunfit for human consumption	Article 10(5)Articles 2(4) and 3Article 5(4)

#### **Application to food offered as prizes, etc.**

3. This Order shall apply—

- (a) in relation to any food which is offered as a prize or reward or given away in connection with any entertainment to which the public are admitted, whether on payment of money or not, as if the food were, or had been, exposed for sale by each person concerned in the organisation of the entertainment;
- (b) in relation to any food which, for the purpose of advertisement or in furtherance of any trade or business, is offered as a prize or reward or given away, as if the food were, or had been, exposed for sale by the person offering or giving away the food; and
- (c) in relation to any food which is exposed or deposited in any premises for the purpose of being so offered or given away as mentioned in sub-paragraph (a) or (b), as if the food were, or had been, exposed for sale by the occupier of the premises;

and in this Article “entertainment” includes any social gathering, amusement, exhibition, performance, game, sport or trial of skill.

#### **Presumptions that food intended for human consumption**

4. For the purposes of this Order—

- (a) any food 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 food commonly used for human consumption which is found on premises used for the preparation, storage, or sale of that food shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing food for sale, for human consumption;
- (c) any article or substance commonly used in the manufacture of food for human consumption which is found on premises used for the preparation, storage or sale of that food shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing food for sale, for human consumption;
- (d) any article or substance capable of being used in the composition or preparation of any food commonly used for human consumption which is found on premises on which that food is prepared shall, until the contrary is proved, be presumed to be intended for such use.

## PART II

### GENERAL PROVISIONS AS TO FOOD

#### **Interpretation**

5.—(1) In this Part “injury”, in relation to health, includes any impairment, whether permanent or temporary, and “injurious to health” shall be construed accordingly.

(2) For the purposes of this Part, food fails to comply with food safety requirements if—

- (a) it has been rendered injurious to health by means of any of the operations mentioned in Article 6;
- (b) it is unfit for human consumption; or
- (c) it is so contaminated (whether by extraneous matter or otherwise) that it would not be reasonable to expect it to be used for human consumption in that state;

and references to such requirements or to food complying with such requirements shall be construed accordingly.

(3) In determining for the purposes of paragraph (2) and Article 6 whether any food is injurious to health, regard shall be had—

- (a) not only to the probable effect of that food on the health of a person consuming it; but
- (b) also to the probable cumulative effect of food of substantially the same composition on the health of a person consuming it in ordinary quantities.

(4) For the purposes of this Part, subject to paragraph (5), any part of, or product derived wholly or partly from, an animal which has been slaughtered otherwise than in a slaughter-house, shall be deemed to be unfit for human consumption.

(5) In paragraph (4), “animal” has the same meaning as in the Slaughter of Animals Act (Northern Ireland) 1932<sup>(8)</sup> and that paragraph shall not apply where accident, illness or emergency affecting the animal in question required it to be slaughtered as mentioned in that paragraph.

#### *Food safety*

#### **Rendering food injurious to health**

6. Any person who renders any food injurious to health by means of any of the following operations, namely—

- (a) adding any article or substance to the food;
- (b) using any article or substance as an ingredient in the preparation of the food;
- (c) abstracting any constituent from the food; and
- (d) subjecting the food to any other process or treatment,

with intent that it shall be sold for human consumption, shall be guilty of an offence.

#### **Selling food not complying with food safety requirements**

7.—(1) Any person who—

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(8) 1932 c. 9 (N.I.)

- (a) sells for human consumption, or offers, exposes or advertises for sale for such consumption, or has in his possession for the purpose of such sale or of preparation for such sale; or
- (b) deposits with, or consigns to, any other person for the purpose of such sale or of preparation for such sale,

any food which fails to comply with food safety requirements shall be guilty of an offence.

(2) Where any food which fails to comply with food safety requirements is part of a batch, lot or consignment of food of the same class or description, it shall be presumed for the purposes of this Article and Article 8, until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

### **Inspection and seizure of suspected food**

**8.—(1)** An authorised officer may at all reasonable times inspect any food intended for human consumption which—

- (a) has been sold or is offered or exposed for sale; or
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale;

and paragraphs (3) to (9) shall apply where, on such an inspection, it appears to the authorised officer that any food fails to comply with food safety requirements.

(2) The following provisions shall also apply where, otherwise than on such an inspection, it appears to an authorised officer that any food is likely to cause food poisoning or any disease communicable to human beings.

(3) The authorised officer may either—

- (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it—
  - (i) is not to be used for human consumption; and
  - (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or
- (b) seize the food and remove it in order to have it dealt with by a justice of the peace;

and any person who knowingly contravenes the requirements of a notice under sub-paragraph (a) shall be guilty of an offence.

(4) Where the authorised officer gives notice under paragraph (3)(a), he shall, as soon as is reasonably practicable and in any event before the expiration of 21 days from the date of the notice, determine whether or not he is satisfied that the food complies with food safety requirements and—

- (a) if he is so satisfied, shall forthwith withdraw the notice;
- (b) if he is not so satisfied, shall seize the food and remove it in order to have it dealt with by a justice of the peace.

(5) Where an authorised officer seizes and removes food under paragraph (3)(b) or (4)(b), he shall inform the person in charge of the food of his intention to have it dealt with by a justice of the peace and—

- (a) any person who under Article 6 or 7 might be liable to a prosecution in respect of the food shall, if he attends before the justice of the peace by whom the food falls to be dealt with, be entitled to be heard and to call witnesses; and
- (b) that justice of the peace may, but need not, be a member of the court before which any person is charged with an offence under that Article in relation to that food.

(6) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any food falling to be dealt with by him under this Article fails to comply with food safety requirements, he shall condemn the food and order—

- (a) the food to be destroyed or to be so disposed of as to prevent it from being used for human consumption; and
- (b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the food.

(7) If a notice under paragraph (3)(a) is withdrawn, or the justice of the peace by whom any food falls to be dealt with under this Article refuses to condemn it, the district council or, as the case may be, the Department of Agriculture shall compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under paragraph (7) shall be determined by a single arbitrator appointed, failing agreement between the parties, by the Head of the Department concerned; and the provisions of the Arbitration Act (Northern Ireland) 1937<sup>(9)</sup> shall apply accordingly.

(9) In this Article—

- (a) any reference to an authorised officer includes a reference to a director of public health of a Health and Social Services Board;
- (b) in paragraph (7) the reference to the district council or, as the case may be, the Department of Agriculture includes, in relation to a director of public health of a Health and Social Services Board, the Health and Social Services Board;
- (c) “Health and Social Services Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(10)</sup>.

### **Improvement notices**

**9.—**(1) If an authorised officer has reasonable grounds for believing that the proprietor of a food business is failing to comply with any regulations to which this Article applies, he may, by a notice served on that proprietor (an “improvement notice”)—

- (a) state the officer’s grounds for believing that the proprietor is failing to comply with the regulations;
  - (b) specify the matters which constitute the proprietor’s failure so to comply;
  - (c) specify the measures which, in the officer’s opinion, the proprietor must take in order to secure compliance; and
  - (d) require the proprietor to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.
- (2) Any person who fails to comply with an improvement notice shall be guilty of an offence.
- (3) This Article and Article 10 apply to any regulations under this Part which make provision—
- (a) for requiring, prohibiting or regulating the use of any process or treatment in the preparation of food; or
  - (b) for securing the observance of hygienic conditions and practices in connection with the carrying out of commercial operations with respect to food or food sources.

<sup>(9)</sup> 1937 c. 8 (N.I.)

<sup>(10)</sup> 1972 NI 14



## **Prohibition orders**

### **10.—(1) If—**

- (a) the proprietor of a food business is convicted of an offence under any regulations to which this Article applies; and
- (b) the court by or before which he is so convicted is satisfied that the health risk condition is fulfilled with respect to that business,

the court shall by an order impose the appropriate prohibition.

(2) The health risk condition is fulfilled with respect to any food business if any of the following involves risk of injury to health, namely—

- (a) the use for the purposes of the business of any process or treatment;
- (b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; and
- (c) the state or condition of any premises or equipment used for the purposes of the business.

### (3) The appropriate prohibition is—

- (a) in a case falling within paragraph (2)(a), a prohibition on the use of the process or treatment for the purposes of the business;
- (b) in a case falling within paragraph (2)(b), a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description;<sup>60</sup>
- (c) in a case falling within paragraph (2)(c), a prohibition on the use of the premises or equipment for the purposes of any food business.

### (4) If—

- (a) the proprietor of a food business is convicted of an offence under any regulations to which this Article applies by virtue of Article 9(3)(b); and
- (b) the court by or before which he is so convicted thinks it proper to do so in all the circumstances of the case,

the court may, by order, impose a prohibition on the proprietor participating in the management of any food business, or any food business of a class or description specified in the order.

(5) As soon as practicable after the making of an order under paragraph (1) or (4) (a “prohibition order”), the district council or, as the case may be, the Department of Agriculture shall—

- (a) serve a copy of the order on the proprietor of the business; and
- (b) in the case of an order under paragraph (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the business as it considers appropriate;

and any person who knowingly contravenes such an order shall be guilty of an offence.

### (6) A prohibition order shall cease to have effect—

- (a) in the case of an order under paragraph (1), on the issue by the district council or, as the case may be, the Department of Agriculture of a certificate to the effect that it is satisfied that the proprietor has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the business;
- (b) in the case of an order under paragraph (4), on the giving by the court of a direction to that effect.

(7) The district council or, as the case may be, the Department of Agriculture shall issue a certificate under paragraph (6)(a) before the expiration of 3 days from being satisfied as mentioned in that sub-paragraph; and, on an application by the proprietor for such a certificate, shall—

- (a) determine, as soon as is reasonably practicable and in any event before the expiration of 14 days from the making of the application, whether or not it is so satisfied; and
- (b) if it determines that it is not so satisfied, give notice to the proprietor of the reasons for that determination.

(8) The court shall give a direction under paragraph (6)(b) if, on an application by the proprietor, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the proprietor since the making of the order; but no such application shall be entertained if it is made—

- (a) before the expiration of 6 months from the making of the prohibition order; or
- (b) before the expiration of 3 months from the making by the proprietor of a previous application for such a direction.

(9) Where a magistrates' court makes an order under Article 11 with respect to any food business, paragraph (1) of this Article shall apply as if the proprietor of the business had been convicted by the court of an offence under regulations to which this Article applies.

(10) Paragraph (4) shall apply in relation to a manager of a food business as it applies in relation to the proprietor of such a business; and any reference in paragraph (5) or (8) to the proprietor of the business, or to the proprietor, shall be construed accordingly.

(11) In paragraph (10) “manager”, in relation to a food business, means any person who is entrusted by the proprietor with the day to day running of the business, or any part of the business.

### **Emergency prohibition notices and orders**

**11.**—(1) If an authorised officer is satisfied that the health risk condition is fulfilled with respect to any food business, he may, by a notice served on the proprietor of the business (an “emergency prohibition notice”), impose the appropriate prohibition.

(2) If a magistrates' court is satisfied, on the application of such an officer, that the health risk condition is fulfilled with respect to any food business, the court shall, by order (an “emergency prohibition order”), impose the appropriate prohibition.

(3) An authorised officer shall not apply for an emergency prohibition order unless, at least one day before the date of the application, he has served notice on the proprietor of the business of his intention to apply for the order.

(4) Paragraphs (2) and (3) of Article 10 shall apply for the purposes of this Article as they apply for the purposes of that Article, but as if the reference in paragraph (2) to risk of injury to health were a reference to imminent risk of such injury.

(5) As soon as practicable after the service of an emergency prohibition notice, the district council or, as the case may be, the Department of Agriculture shall affix a copy of the notice in a conspicuous position on such premises used for the purposes of the business as it considers appropriate; and any person who knowingly contravenes such a notice shall be guilty of an offence.

(6) As soon as practicable after the making of an emergency prohibition order, the district council or, as the case may be, the Department of Agriculture shall—

- (a) serve a copy of the order on the proprietor of the business; and
- (b) affix a copy of the order in a conspicuous position on such premises used for the purposes of that business as it considers appropriate;

and any person who knowingly contravenes such an order shall be guilty of an offence.

(7) An emergency prohibition notice shall cease to have effect—

- (a) if no application for an emergency prohibition order is made before the expiration of the period of 3 days from the service of the notice, at the end of that period;

(b) if such an application is so made, on the determination or abandonment of the application.

(8) An emergency prohibition notice or emergency prohibition order shall cease to have effect on the issue by the district council or, as the case may be, the Department of Agriculture of a certificate to the effect that it is satisfied that the proprietor has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the business.

(9) The district council or, as the case may be, the Department of Agriculture shall issue a certificate under paragraph (8) before the expiration of 3 days from being satisfied as mentioned in that paragraph; and, on an application by the proprietor for such a certificate, shall—

- (a) determine, as soon as is reasonably practicable and in any event before the expiration of 14 days from the making of the application, whether or not it is so satisfied; and
- (b) if it determines that it is not so satisfied, give notice to the proprietor of the reasons for that determination.

(10) Where an emergency prohibition notice is served on the proprietor of a business, the district council or, as the case may be, the Department of Agriculture shall compensate him in respect of any loss suffered by reason of his complying with the notice unless—

- (a) an application for an emergency prohibition order is made before the expiration of 3 days from the service of the notice; and
- (b) the court declares itself satisfied, on the hearing of the application, that the health risk condition was fulfilled with respect to the business at the time when the notice was served;

and any disputed question as to the right to or the amount of any compensation payable under this paragraph shall be determined by a single arbitrator appointed, failing agreement between the parties, by the Head of the Department concerned; and the provisions of the Arbitration Act (Northern Ireland) 1937(11) shall apply accordingly.

### **Emergency control orders**

**12.**—(1) If it appears to the Department concerned that the carrying out of commercial operations with respect to food, food sources or contact materials of any class or description involves or may involve imminent risk of injury to health, that Department may, by order (an “emergency control order”), prohibit the carrying out of such operations with respect to food, food sources or contact materials of that class or description.

(2) Any person who knowingly contravenes an emergency control order shall be guilty of an offence.

(3) The Department concerned may consent, either unconditionally or subject to any condition that that Department considers appropriate, to the doing in a particular case of anything prohibited by an emergency control order.

- (4) It shall be a defence for a person charged with an offence under paragraph (2) to show—
- (a) that consent had been given under paragraph (3) to the contravention of the emergency control order; and
  - (b) that any condition subject to which that consent was given was complied with.

- (5) The Department concerned—
- (a) may give such directions as appear to that Department to be necessary or expedient for the purpose of preventing the carrying out of commercial operations with respect to any food, food sources or contact materials which that Department believes, on reasonable grounds, to be food, food sources or contact materials to which an emergency control order applies; and

(b) may do anything which appears to that Department to be necessary or expedient for that purpose.

(6) Any person who fails to comply with a direction under this Article shall be guilty of an offence.

(7) If the Department concerned does anything by virtue of this Article in consequence of any person failing to comply with an emergency control order or a direction under this Article, that Department may recover from that person any expenses reasonably incurred by that Department under this Article.

(8) For the purposes of this Article, in the case of food or food sources which have left a designated area within the meaning of section 1(2) of the Food and Environment Protection Act 1985(12) and which were subject to an order under that section 1, the Department concerned means the Department of Agriculture.

### *Consumer protection*

#### **Selling food not of the nature or substance or quality demanded**

**13.—**(1) Any person who sells to the purchaser's prejudice any food which is not of the nature or substance or quality demanded by the purchaser shall be guilty of an offence.

(2) In paragraph (1) the reference to sale shall be construed as a reference to sale for human consumption; and in proceedings under that paragraph it shall not be a defence that the purchaser was not prejudiced because he bought for analysis or examination.

#### **Falsely describing or presenting food**

**14.—**(1) Any person who gives with any food sold by him, or displays with any food offered or exposed by him for sale or in his possession for the purpose of sale, a label, whether or not attached to or printed on the wrapper or container, which—

(a) falsely describes the food; or

(b) is likely to mislead as to the nature or substance or quality of the food,

shall be guilty of an offence.

(2) Any person who publishes, or is a party to the publication of, an advertisement (not being such a label given or displayed by him as mentioned in paragraph (1)) which—

(a) falsely describes any food; or

(b) is likely to mislead as to the nature or substance or quality of any food,

shall be guilty of an offence.

(3) Any person who sells, or offers or exposes for sale, or has in his possession for the purpose of sale, any food the presentation of which is likely to mislead as to the nature or substance or quality of the food shall be guilty of an offence.

(4) In proceedings for an offence under paragraph (1) or (2), the fact that a label or advertisement in respect of which the offence is alleged to have been committed contained an accurate statement of the composition of the food shall not preclude the court from finding that the offence was committed.

(5) In this Article references to sale shall be construed as references to sale for human consumption.

## *Regulations*

### **Food safety and consumer protection**

#### **15.—(1) Regulations may make—**

- (a) provision for requiring, prohibiting or regulating the presence in food or food sources of any specified substance, or any substance of any specified class, and generally for regulating the composition of food;
- (b) provision for securing that food is fit for human consumption and meets such microbiological standards (whether going to the fitness of the food or otherwise) as may be specified by or under the regulations;
- (c) provision for requiring, prohibiting or regulating the use of any process or treatment in the preparation of food;
- (d) provision for securing the observance of hygienic conditions and practices in connection with the carrying out of commercial operations with respect to food or food sources;
- (e) provision for imposing requirements or prohibitions as to, or otherwise regulating, the labelling, marking, presenting or advertising of food, and the descriptions which may be applied to food; and
- (f) such other provision with respect to food or food sources, including in particular provision for prohibiting or regulating the carrying out of commercial operations with respect to food or food sources, as appears to the Department concerned to be necessary or expedient—
  - (i) for the purpose of securing that food complies with food safety requirements or in the interests of the public health; or
  - (ii) for the purpose of protecting or promoting the interests of consumers.

#### **(2) Regulations may also make provision—**

- (a) for securing the observance of hygienic conditions and practices in connection with the carrying out of commercial operations with respect to contact materials which are intended to come into contact with food intended for human consumption;
- (b) for imposing requirements or prohibitions as to, or otherwise regulating, the labelling, marking or advertising of such materials, and the descriptions which may be applied to them; and
- (c) otherwise for prohibiting or regulating the carrying out of commercial operations with respect to such materials.

(3) Without prejudice to the generality of paragraph (1), regulations under that paragraph may make any such provision as is mentioned in Schedule 1.

(4) In making regulations under paragraph (1), the Department concerned shall have regard to the desirability of restricting, so far as practicable, the use of substances of no nutritional value as foods or as ingredients of foods.

#### **(5) In paragraph (1) and Schedule 1—**

- (a) references to food shall be construed as references to food intended for sale for human consumption; and
- (b) references to food sources shall be construed as references to food sources from which such food is intended to be derived.

**Enforcement of Community provisions**

16.—(1) Regulations may make such provision with respect to food, food sources or contact materials, including in particular provision for prohibiting or regulating the carrying out of commercial operations with respect to food, food sources or contact materials, as appears to the Department concerned to be called for by any Community obligation.

(2) As respects any directly applicable Community provision which relates to food, food sources or contact materials and for which, in the opinion of the Department concerned, it is appropriate to provide under this Order, regulations may—

- (a) make such provision as the Department concerned considers necessary or expedient for the purpose of securing that the Community provision is administered, executed and enforced under this Order; and
- (b) apply such of the provisions of this Order as may be specified in the regulations in relation to the Community provision with such modifications, if any, as may be so specified.

(3) In paragraphs (1) and (2) references to food or food sources shall be construed in accordance with Article 15(5).

**Special provisions for particular foods, etc.**

17.—(1) Regulations may make provision—

- (a) for prohibiting the carrying out of commercial operations with respect to novel foods or food sources from which such foods are intended to be derived of any class specified in the regulations; or
- (b) for prohibiting the carrying out of such operations with respect to genetically modified food sources, or foods derived from such food sources, of any class so specified;

and in either case for excluding from the prohibition any food or food source which is of a description specified by or under the regulations.

(2) Regulations may also—

- (a) prescribe, in relation to milk of any description which complies with such requirements as may be prescribed, such designation as the Department concerned considers appropriate;
- (b) prohibit—
  - (i) all sales by retail; or
  - (ii) use, or possession for use, for the purposes of a business, of milk, unless the milk is of a description to which a designation has been prescribed under sub-paragraph (a) and complies with the requirements of milk of that designation;
- (c) make provision for—
  - (i) the issue of milk licences;
  - (ii) the authorisation of the sale of milk produced by the holder of a milk licence in any area where no milk of a description prescribed under sub-paragraph (a) is available; and
  - (iii) the imposition of conditions subject to which such a sale may be made.

(3) For the purposes of this Article a food source is genetically modified if any of the genes or other genetic material in the food source—

- (a) has been modified by means of an artificial technique; or
- (b) is inherited or otherwise derived through any number of replications, from genetic material which was so modified;

and in this paragraph “artificial technique” does not include any technique which involves no more than, or no more than the assistance of, naturally occurring processes of reproduction (including selective breeding techniques or in vitro fertilisation).

### **Registration and licensing of food premises**

**18.**—(1) Regulations may make provision—

- (a) for the registration by district councils of premises used or proposed to be used for the purposes of a food business, and for prohibiting the use for those purposes of any premises which are not registered in accordance with the regulations; or
- (b) subject to paragraph (2), for the issue by district councils or, as the case may be, the Department of Agriculture of licences in respect of the use of premises for the purposes of a food business, and for prohibiting the use for those purposes of any premises except in accordance with a licence issued under the regulations.

(2) The Department concerned shall exercise the power conferred by paragraph (1)(b) only where it appears to that Department to be necessary or expedient to do so—

- (a) for the purpose of securing that food complies with food safety requirements or in the interests of the public health; or
- (b) for the purpose of protecting or promoting the interests of consumers.

*Defences, etc.*

### **Offences due to fault of another person**

**19.** Where the commission by any person of an offence under any of the preceding provisions of this Part is due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this Article whether or not proceedings are taken against the first-mentioned person.

### **Defence of due diligence**

**20.**—(1) In any proceedings for an offence under any of the preceding provisions of this Part, it shall, subject to paragraph (5), be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) Without prejudice to the generality of paragraph (1), a person charged with an offence under Article 7, 13 or 14 who neither—

- (a) prepared the food in respect of which the offence is alleged to have been committed; nor
- (b) imported it into Northern Ireland,

shall be taken to have established the defence provided by that paragraph if he satisfies the requirements of paragraph (3) or (4).

(3) A person satisfies the requirements of this paragraph if he proves—

- (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;
- (b) that he carried out all such checks of the food in question as were reasonable in all the circumstances, or that it was reasonable in all the circumstances for him to rely on checks carried out by the person who supplied the food to him; and

- (c) that he did not know and had no reason to suspect at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision.
- (4) A person satisfies the requirements of this paragraph if he proves—
- (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;
  - (b) that the sale or intended sale of which the alleged offence consisted was not a sale or intended sale under his name or mark; and
  - (c) that he did not know, and could not reasonably have been expected to know, at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision.
- (5) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless—
- (a) at least 7 clear days before the hearing; and
  - (b) where he has previously appeared before a court in connection with the alleged offence, before the expiration of one month from his first such appearance,
- he has served on the prosecution a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.
- (6) In paragraph (5) any reference to appearing before a court shall be construed as including a reference to being brought before a court.

### **Defence of publication in the course of business**

- 21.** In proceedings for an offence under any of the preceding provisions of this Part consisting of the advertisement for sale of any food, it shall be a defence for the person charged to prove—
- (a) that he is a person whose business it is to publish or arrange for the publication of advertisements; and
  - (b) that he received the advertisement in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under that provision.

### *Miscellaneous and supplemental*

### **Provision of food hygiene training**

- 22.—(1)** A district council may provide, whether within or outside its district, training courses in food hygiene for persons who are or intend to become involved in food businesses, whether as proprietors or employees or otherwise.
- (2) The Department of Agriculture may provide training courses in food hygiene for persons who are or intend to become involved in liquid milk plants or dairy farms, whether as proprietors or employees or otherwise.
- (3) A district council or, as the case may be, that Department may contribute towards the expenses incurred under this Article by any other council or, as the case may be, that Department, or towards expenses incurred by any other person in providing, such courses as are mentioned in paragraph (1) or (2).



### **Provision of facilities for cleansing shellfish**

23.—(1) A district council may provide, whether within or outside its district, tanks or other apparatus for cleansing shellfish.

(2) A district council may contribute towards the expenses incurred under this Article by any other council, or towards expenses incurred by any other person in providing, and making available to the public, tanks or other apparatus for cleansing shellfish.

(3) Nothing in this Article shall authorise the establishment of any tank or other apparatus, or the execution of any other work, on, over or under tidal lands below high-water mark of ordinary spring tides, except in accordance with such plans and sections, and subject to such restrictions and conditions, as may before the work is commenced be approved by the Department of the Environment.

(4) In this Article “cleansing”, in relation to shellfish, includes subjecting them to any germicidal treatment.

### **Orders for facilitating the exercise of functions**

24.—(1) For the purpose of facilitating the exercise of its functions, the Department concerned may by order require every person who at the date of the order, or at any subsequent time, carries on a business of a specified class or description (a “relevant business”)—

- (a) to afford to persons specified in the order such facilities for the taking of samples of any food, substance or contact material to which paragraph (2) applies; or
- (b) to furnish to persons so specified such information concerning any such food, substance or contact material,

as (in each case) is specified in the order and is reasonably required by such persons.

(2) This paragraph applies to—

- (a) any food of a class specified in the order which is sold or intended to be sold in the course of a relevant business for human consumption;
- (b) any substance of a class so specified which is sold in the course of such a business for use in the preparation of food for human consumption, or is used for that purpose in the course of such a business; and
- (c) any contact material of a class so specified which is sold in the course of such a business and is intended to come into contact with food intended for human consumption.

(3) Information relating to any individual business which is obtained by means of an order under paragraph (1) shall not, without the previous consent in writing of the person carrying on the business, be disclosed except—

- (a) in accordance with directions of the Department concerned, so far as may be necessary for the purposes of this Order or of any corresponding statutory provision in force in Great Britain, or for the purpose of complying with any Community obligation; or
- (b) for the purposes of any proceedings for an offence against the order or any report of those proceedings;

and any person who discloses any such information in contravention of this paragraph shall be guilty of an offence.

(4) In paragraph (3) the reference to a disclosure being necessary for the purposes of this Order includes a reference to it being necessary—

- (a) for the purpose of securing that food complies with food safety requirements or in the interests of the public health; or
- (b) for the purpose of protecting or promoting the interests of consumers;

and the reference to a disclosure being necessary for the purposes of any corresponding statutory provision in force in Great Britain shall be construed accordingly.

### **Regulations and orders: supplementary provisions**

**25.**—(1) Regulations under this Part may—

- (a) make provision for prohibiting or regulating the carrying out of commercial operations with respect to any food, food source or contact material—
  - (i) which fails to comply with the regulations; or
  - (ii) in relation to which an offence against the regulations has been committed, or would have been committed if any relevant act or omission had taken place in Northern Ireland; and
- (b) without prejudice to the generality of Article 8, provide that any food which, in accordance with the regulations, is certified as being such food as is mentioned in sub-paragraph (a) may be treated for the purposes of that Article as failing to comply with food safety requirements.

(2) Regulations under this Part may also—

- (a) require persons carrying on any activity to which the regulations apply to keep and produce records and provide returns;
- (b) prescribe the particulars to be entered on any register required to be kept in accordance with the regulations;
- (c) require any such register to be open to inspection by the public at all reasonable times and, subject to that, authorise it to be kept by means of a computer;
- (d) prescribe the periods for which and the conditions subject to which licences may be issued, and provide for the subsequent alteration of conditions and for the cancellation, suspension or revocation of licences;
- (e) provide for an appeal to a magistrates' court against any decision of a district council or the Department of Agriculture or of an authorised officer.

(3) Regulations under this Part or an order under Article 24 may—

- (a) provide that an offence under the regulations or order shall be punishable on summary conviction or on indictment or in either one way or the other; and
- (b) include provisions under which a person guilty of such an offence shall be liable to such penalties (not exceeding those which may be imposed in respect of offences under this Order) as may be specified in the regulations or order.

## **PART III**

### **ADMINISTRATION AND ENFORCEMENT**

#### *Administration*

#### **Enforcement of this Order**

**26.**—(1) The provisions of this Order shall be enforced and executed—

- (a) except as provided by sub-paragraphs (b) and (c) and by Article 12(8), in the case of all foods, by each district council within its district;

- (b) in the case of imported milk or milk in liquid milk plants or dairy farms, by the Department of Agriculture;
- (c) in the case of—
  - (i) the control on residues in meat or milk of veterinary drugs and such other substances as may be specified in an order;
  - (ii) the use of novel processes or treatments in the preparation of food;
  - (iii) novel foods, genetically modified food sources, food sources from which novel foods are intended to be derived or foods derived from genetically modified food sources;by each district council within its district and the Department of Agriculture.

(2) The Department may direct, in relation to cases of a particular description or a particular case, that any duty imposed on district councils by paragraph (1) shall be discharged by the Department and not by those councils.

(3) Regulations or orders shall specify which authorities are to enforce and execute them, either generally or in relation to cases of a particular description or a particular area, and any such regulations or orders may provide for the giving of assistance and information, by any authority concerned in the administration of the regulations or orders, or of any provisions of this Order, to any other authority so concerned, for the purposes of their respective duties under them.

(4) The Department may take over the conduct of any such proceedings which have been instituted by a district council.

(5) Any environmental health officer appointed by a district council in exercise of its powers under section 41 of the Local Government Act (Northern Ireland) 1972(13) shall be deemed to be an authorised officer of that council for the purposes of this Order.

### **Appointment of public and other analysts**

27.—(1) Every district council shall appoint in accordance with this Article one or more than one person (“public analysts”) to act as analysts within the district of the council for the purposes of the functions conferred on district councils by this Order.

(2) A person shall not be appointed as a public analyst unless he possesses—

- (a) such qualifications as may be prescribed by regulations; or
- (b) such other qualifications as the Department may approve.

(3) A person who is engaged directly or indirectly in any food business which is carried on in any district shall not be appointed public analyst for that district.

(4) A district council shall pay to a public analyst such remuneration as may be agreed upon by the council and the analyst, and that remuneration may be expressed to be payable—

- (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 council.

(5) A district council which appoints 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 the provisions of paragraphs (2) to (4) shall apply in relation to a deputy public analyst as they apply in relation to a public analyst.

(6) The Department of Agriculture may appoint one or more than one person to act as analysts for the purposes of the functions conferred on that Department by this Order; and the provisions of paragraphs (2), (4) and (5) shall apply to an analyst appointed by that Department under this

paragraph as they apply to a public analyst appointed by a district council under paragraph (1) with the following modifications—

- (a) in paragraph (2)(b) for the reference to the Department there shall be substituted a reference to the Department of Agriculture; and
- (b) in paragraphs (4) and (5) for any reference to a district council there shall be substituted a reference to the Department of Agriculture.

### **Provision of facilities for examinations**

**28.** A district council may provide facilities for examinations for the purposes of this Order.

*Sampling and analysis, etc.*

### **Procurement of samples**

**29.** An authorised officer 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 Article 33;
- (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 Order or of regulations or orders made under it.

### **Analysis, etc., of samples procured by authorised officer of a district council**

**30.—(1)** An authorised officer of a district council who has procured a sample under Article 29 shall—

- (a) if he considers that the sample should be analysed, submit it to be analysed either—
  - (i) by the public analyst for the district in which the sample was procured; or
  - (ii) by the public analyst for the district which consists of or includes the district of the council;
- (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—

- (a) to be analysed by the public analyst for the district 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 Article, the office of public analyst for the district in question is vacant, the sample shall be submitted to the public analyst for some other district.

(4) If, in any case where a sample is proposed to be or is submitted for analysis or examination under this Article, 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 Article, but may, except where—

(a) he is the public analyst for the district in question; and

(b) the sample is submitted to him for analysis by an authorised officer of a district council, 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 paragraph (6) 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 Order, the production by one of the parties—

(a) of a document purporting to be a certificate given by a food analyst or examiner under paragraph (6); 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 sub-paragraph (a), the other party requires that the food analyst or examiner shall be called as a witness.

(9) In this Article—

“food analyst” means a public analyst or any other person who possesses the requisite qualifications to carry out analyses for the purposes of this Order;

“food examiner” means any person who possesses the requisite qualifications to carry out examinations for the purposes of this Order;

“the requisite qualifications” means such qualifications as may be prescribed by regulations, or such other qualifications as the Department may approve;

“sample”, in relation to an authorised officer of a district council, includes any part of a sample retained by him in pursuance of regulations under Article 32;

and where 2 or more than 2 public analysts are appointed for any district, any reference in this Article to the public analyst for that district shall be construed as a reference to either or any of them.

### **Analysis, etc., of samples procured by authorised officer of the Department of Agriculture**

**31.**—(1) An authorised officer of the Department of Agriculture who has procured a sample under Article 29 may—

(a) if he considers that the sample should be analysed by an analyst appointed under Article 27(6), submit it to be so analysed;

(b) if he considers that the sample should be examined by a food examiner, submit it to be so examined.

(2) Paragraphs (4) to (8) of Article 30 shall apply for the purpose of the analysis or examination of a sample submitted under paragraph (1) of this Article as they apply for the purpose of the analysis or examination of a sample submitted under paragraph (1) of Article 30.

(3) For the purposes of this Article—

“food analyst” means an analyst appointed under Article 27(6) or any other person who possesses the requisite qualifications to carry out analyses for the purposes of this Order;

“food examiner” means any person who possesses the requisite qualifications to carry out examinations for the purposes of this Order;

“the requisite qualifications” means such qualifications as may be prescribed by regulations, or such other qualifications as the Department of Agriculture may approve;

“sample”, in relation to an authorised officer of the Department of Agriculture, includes any part of a sample retained by him in pursuance of regulations under Article 32.

### **Regulation of sampling and analysis, etc.**

**32.**—(1) Regulations may make provision for supplementing or modifying the provisions of Articles 29 to 31.

(2) Without prejudice to the generality of paragraph (1), regulations made under that paragraph 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.

### *Powers of entry and obstruction, etc.*

#### **Powers of entry**

**33.**—(1) An authorised officer 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 for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of this Order, or of regulations or orders made under it; and
- (b) to enter any premises for the purpose of the performance by the district council or, as the case may be, the Department of Agriculture of its functions under this Order; and
- (c) in the case of an authorised officer of a district council, to enter any business premises outside the council’s district for the purpose of ascertaining whether there is on the

premises any evidence of any contravention within that district of any of the provisions of this Order or of regulations or orders made under it.

(2) Admission to any premises used only as a private dwelling-house shall not be demanded under paragraph (1) as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(3) If a justice of the peace, on sworn complaint in writing, is satisfied that there is reasonable ground for entry into any premises for any purpose mentioned in paragraph (1) 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.

(4) Every warrant granted under this Article shall continue in force for a period of one month.

(5) An authorised officer entering any premises by virtue of this Article, 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.

(6) An authorised officer entering premises by virtue of this Article, 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.

(7) Any officer exercising any power conferred by paragraph (6) 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 Order 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.

(8) If any person who enters any premises by virtue of this Article, 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.

(9) Nothing in this Order authorises any person, except with the permission of the Department of Agriculture under the Diseases of Animals (Northern Ireland) Order 1981(14), to enter any premises—

- (a) in which there is kept an animal or bird affected or, with good reason, suspected of being affected with any disease to which that Order of 1981 applies; and
- (b) which is situated in a place declared under that Order of 1981 to be infected with such a disease.

### **Obstruction, etc., of officers**

**34.**—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of this Order; or
- (b) without reasonable cause, fails to give to any person acting in the execution of this Order any assistance or information which that person may reasonably require of him for the performance of his functions under this Order,

shall be guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

- (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 paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

### *Offences*

#### **Time limit for prosecutions**

**35.** A prosecution for an offence under this Order which is punishable under Article 36(2) shall not be begun after the expiry of—

- (a) 3 years from the commission of the offence; or
- (b) one year from its discovery by the prosecution,

whichever is the earlier.

#### **Punishment of offences**

**36.**—(1) A person guilty of an offence under Article 34(1) 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 3 months or to both.

(2) A person guilty of any other offence under this Order shall be liable—

- (a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding 2 years or to both;
- (b) on summary conviction, to a fine not exceeding the relevant amount or to imprisonment for a term not exceeding 6 months or to both.

(3) In paragraph (2) “the relevant amount” means—

- (a) in the case of an offence under Article 6, 7 or 13, £20,000;
- (b) in any other case, the statutory maximum.

### *Appeals*

#### **Appeals**

**37.**—(1) Any person who is aggrieved by—

- (a) a decision of an authorised officer to serve an improvement notice;



- (b) a decision of a district council or, as the case may be, the Department of Agriculture to refuse to issue such a certificate as is mentioned in Article 10(6) or 11(8); or
- (c) subject to paragraph (2), a decision of a district council or, as the case may be, the Department of Agriculture to refuse, cancel, suspend or revoke a licence required by regulations under Part II,

may appeal to a court of summary jurisdiction.

(2) The procedure on an appeal to a court of summary jurisdiction under paragraph (1), or an appeal to such a court for which provision is made by regulations under Part II, shall be by way of notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(15).

(3) In any case where such an appeal as is mentioned in paragraph (2) lies, the document notifying the decision to the person concerned shall state—

- (a) the right of appeal to a court of summary jurisdiction; and
- (b) the period within which such an appeal may be brought.

### **Appeals against improvement notices**

**38.**—(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 paragraph, 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 paragraph (2) until it is determined or abandoned.

## **PART IV**

### **MISCELLANEOUS AND SUPPLEMENTAL**

#### *Powers of Department*

#### **Power to issue codes of practice**

**39.**—(1) For the guidance of district councils, 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.

(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 by the Department and requires the council to take any specified steps in order to comply with such a code.

(3) Any direction under paragraph (2)(b) shall, on the application of the Department, be enforceable by mandamus.

(4) Before issuing any code under this Article, the Department shall consult with such organisations as appear to the Department to be representative of interests likely to be substantially affected by the code.

(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.

### **Power to require returns**

**40.** Every district council shall send to the Department such reports and returns, and give to the Department such information, with respect to the exercise of the functions conferred on district councils by or under this Order, as the Department may require.

### **Default powers**

**41.—**(1) Where 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,

the Department may, by order, empower an officer of 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, the Department may cause a local inquiry to be held.

(3) 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 the Department, borrow money in accordance with the statutory provisions relating to borrowing by a district council.

### *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 the deceased’s personal representative, or his widow or any other member of his family, until the expiration of—

- (a) the period of 3 months from the date of his death; or
- (b) such longer period as the district council or, as the case may be, the Department of Agriculture may allow.

### **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(16) as being an officer of the council, whether or not his appointment is a whole-time appointment.

### *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, the Department of Agriculture in respect of things done by those councils or that Department which are required or authorised by or under this Order.

(2) Regulations under this Article may include such provision as the Department concerned 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, 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.

#### **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, the Department of Agriculture.

### *Importation*

#### **Prohibition on importation of particular foods**

**46.**—(1) The Secretary of State may, by regulations, make provision for—

- (a) prohibiting the importation of any food of a class specified in the regulations; and
- (b) excluding from the prohibition any food—
  - (i) which is of a description specified by or under the regulations; and
  - (ii) which is imported at an authorised place of entry.

(2) Regulations under this Article shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946(17) shall apply accordingly.

(3) In this Article “authorised place of entry” means any port, aerodrome or other place of entry authorised by or under the regulations and, in relation to food in a particular consignment, includes any place of entry so authorised for the importation of that consignment.

### *Supplemental*

#### **Regulations and orders**

**47.**—(1) Nothing in this Order shall authorise the Department concerned 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 the Department concerned 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 the Department concerned considers necessary or expedient.
- (3) Before making—
- (a) any regulations under this Order, other than regulations under Article 16(2); or
  - (b) any order under Part I,

the Department concerned shall consult with such organisations as appear to that Department to be representative of interests likely to be substantially affected by the regulations or order.

(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.

#### **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, 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.

## **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 the Department of the Environment or by means of a private water supply.

(2) In this Article “private water supply” means a water supply provided otherwise than by that Department and includes a supply provided for the purpose of bottling.

## **Amendments, transitional provisions, savings and repeals**

**51.**—(1) The statutory provisions set out in Schedule 2 shall have effect subject to the amendments specified in that Schedule (being amendments consequential on this Order).

(2) Without prejudice to section 17(2) of the Interpretation Act (Northern Ireland) 1954,**(18)** an order may make such modifications of instruments made under statutory provisions as appear to the Department concerned 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.

(4) The statutory provisions set out in Schedule 4 are hereby repealed to the extent specified in column 3 of that Schedule.

*G. I. de Deney*  
Clerk of the Privy Council