
STATUTORY INSTRUMENTS

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, 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(1) 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(2) 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,⁽³⁾ 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) 1954 c. 33 (N.I.)

(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.