



# Food Safety Act 1990

## 1990 CHAPTER 16

### PART II

#### MAIN PROVISIONS

*Defences etc.*

#### **21 Defence of due diligence.**

- (1) In any proceedings for an offence under any of the preceding provisions of this Part (in this section referred to as “the relevant provision”), it shall, subject to subsection (5) below, 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 subsection (1) above, a person charged with an offence under [F1section 14 or 15] above who neither—
  - (a) prepared the food in respect of which the offence is alleged to have been committed; nor
  - (b) imported it into Great Britain,shall be taken to have established the defence provided by that subsection if he satisfies the requirements of subsection (3) or (4) below.
- (3) A person satisfies the requirements of this subsection 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.

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- (4) A person satisfies the requirements of this subsection 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 subsection (1) above 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 seven clear days before the hearing; and
  - (b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,
- he has served on the prosecutor 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 subsection (5) above any reference to appearing before a court shall be construed as including a reference to being brought before a court.

#### Textual Amendments

- F1** Words in s. 21(2) substituted (1.1.2005) by [General Food Regulations 2004 \(S.I. 2004/3279\)](#), [regs. 1, 13](#)

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

- C1** S. 21 applied by 1991/370, [reg. 3 \(2\)](#)  
S. 21 applied: (9.4.1992) by [S.I. 1992/496](#), [reg. 7\(1\)\(d\)](#); (13.9.1992) by [S.I. 1992/1971](#), [reg. 9\(d\)](#); (14.9.1992) by [S.I. 1992/1978](#), [reg. 7\(d\)](#); (1.10.1992) by [S.I. 1992/2037](#), [reg. 23\(c\)](#) (which S.I. was revoked (1.4.1995) by [S.I. 1995/539](#), [reg. 25](#), [Sch. 22](#) (with [regs. 3\(2\), 25](#), [Sch. 22](#)))  
S. 21 applied: (14.7.1993) by [S.I. 1993/1520](#), [reg. 2\(2\)\(d\)](#); (29.7.1993) by [S.I. 1993/1658](#), [reg. 7\(d\)](#)  
S. 21 applied (30.6.1999) by [S.I. 1999/1513](#), [reg. 6\(2\)\(b\)](#)  
S. 21 applied (W.) (1.4.2001) by [S.I. 2001/1360](#), [reg. 7\(1\)\(c\)](#)
- C2** S. 21 applied (with modifications) (5.11.1991) by [S.I. 1991/2486](#), [reg. 7\(1\)](#)  
S. 21 applied (with modifications): (1.1.1993 for certain purposes and 15.1.1993 otherwise) by [S.I. 1992/3163](#), [regs. 1, 18\(1\)](#) (which S.I. was revoked (29.4.1998) by [S.I. 1998/994](#), [reg. 59\(1\)](#), [Sch. 5](#)); (1.1.1993 for certain purposes and 15.1.1993 otherwise) by [S.I. 1992/3164](#), [regs. 1, 19\(1\)](#) (which S.I. was revoked (29.4.1998) by [S.I. 1998/994](#), [reg. 59\(1\)](#), [Sch. 5](#)); (18.12.1992 for certain purposes and 1.1.1993 otherwise) by [S.I. 1992/3165](#), [regs. 1, 7\(2\)](#) (which S.I. was revoked (29.4.1998) by [S.I. 1998/994](#), [reg. 59\(1\)](#), [Sch. 5](#)); (31.12.1992) by [S.I. 1992/3236](#), [reg. 11\(1\)](#)  
S. 21 applied (with modifications): (1.4.1994) by [S.I. 1994/743](#), [reg. 8\(1\)\(d\)](#); (1.5.1994) by [S.I. 1994/1029](#), [reg. 25\(c\)](#) (which S.I. was revoked (1.4.1995) by [S.I. 1995/540](#), [reg. 26](#) (with [reg. 3\(5\)](#))); (2.9.1994) by [S.I. 1994/2127](#), [reg. 5](#); (1.1.1995) by [S.I. 1994/3082](#), [reg. 21](#)  
S. 21 applied (with modifications): (1.3.1995) by [S.I. 1995/77](#), [reg. 23](#); (1.4.1995) by [S.I. 1995/539](#), [reg. 22](#) and [S.I. 1995/540](#), [reg. 24](#); (1.4.1995) by [S.I. 1995/614](#), [reg. 11](#); (9.5.1995) by [S.I. 1995/1086](#), [reg. 20\(1\)\(d\)](#); (15.6.1995) by [S.I. 1995/1372](#), [reg. 20\(1\)\(d\)](#); (10.7.1995) by [S.I. 1995/1544](#), [reg. 10](#); (15.9.1995) by [S.I. 1995/1763](#), [reg. 7\(d\)](#); (15.9.1995) by [S.I. 1995/2200](#), [reg. 18](#); (20.9.1995) by [S.I. 1995/2148](#), [reg. 17](#); (1.1.1996) by [S.I. 1995/3116](#), [reg. 8](#); (1.1.1996) by [S.I. 1995/3123](#), [reg. 9\(d\)](#) and

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- S.I. 1995/3124, **reg. 11(d)**; (1.1.1996) by S.I. 1995/3187, **reg. 9**; (1.1.1996) by S.I. 1995/3202, **reg. 11**; (1.1.1996) by S.I. 1995/3205, **reg. 14**; (1.1.1996) by S.I. 1995/3240, **reg. 10(d)** (which S.I. was revoked (1.7.1996) by S.I. 1996/1499, **reg. 49, Sch. 9**)
- S. 21 applied (with modifications): (29.3.1996) by S.I. 1996/961, **reg. 4(d)**; (1.7.1996) by: S.I. 1996/1499, **reg. 48**; S.I. 1996/1502, **reg. 6**
- S. 21 applied (with modifications): (16.6.1997) by S.I. 1997/1335, **reg. 6(d)**; (30.6.1997) by S.I. 1995/1544, **reg. 10(1)** (as substituted (30.6.1997) by S.I. 1997/1414, **reg. 3**); (4.7.1997) by S.I. 1997/1499, **reg. 6(1)** (which S.I. was revoked (18.6.2002 (E.), 1.7.2002 (S.), 2.8.2002 (W.)) by S.I. 2002/890, **reg. 11, Sch.**; S.S.I. 2002/267, **reg. 11, Sch.**; S.I. 2002/1886, **reg. 11, Sch.**); (17.11.1997) by S.I. 1997/2537, **reg. 9**; (16.12.1997) by S.I. 1997/2959, **reg. 11**; (1.1.1998) by S.I. 1997/2965, **reg. 30**; (31.3.1999) by S.I. 1997/2042, **reg. 9** and S.I. 1997/2182, **reg. 9**
- S. 21 applied (with modifications): (19.2.1998) by S.I. 1998/141, **reg. 10(d)**; (1.4.1998) by S.I. 1998/616, **reg. 6(1)(c)**; (29.4.1998) by S.I. 1998/994, **reg. 55(1)(c)**; (31.10.1998) by S.I. 1998/2424, **reg. 8(d)**;
- S. 21 applied (with modifications): (30.6.1999) by S.I. 1999/1540, **reg. 19(1)(d)**; (1.10.1999) by S.I. 1999/2457, **reg. 8(1)**; (1.10.1999) by S.S.I. 1999/34, **reg. 8(1)**; (19.3.1999) by S.I. 1996/1499, **reg. 48** (as substituted by S.I. 1999/747, **reg. 11**); (17.12.1999) by S.S.I. 1999/186, **reg. 9**
- S. 21 applied (with modifications): (E.) (10.4.2000) by S.I. 2000/768, **reg. 10(1)**; (S.) (10.4.2000) by S.S.I. 2000/83, **reg. 10(1)**; (W.) (25.7.2000) by S.I. 2000/1925, **reg. 10(1)**
- S. 21 applied (with modifications): (E.) (15.1.2001) by S.I. 2000/3323, **reg. 10(d)**; (W.) (1.11.2001) by S.I. 2000/1866, **reg. 7(d)**; (S.) (1.11.2001) by S.S.I. 2000/130, **reg. 7(d)**; (E.) (1.11.2001) by S.I. 2000/845, **reg. 7(d)**
- S. 21 applied (with modifications): (S.) (17.3.2001) by S.S.I. 2001/38, **reg. 10**; (W.) (1.5.2001) by S.I. 2001/1361, **reg. 8(1)**; (W.) (1.5.2001) by S.I. 2001/1440, **reg. 10(d)**
- S. 21 applied (with modifications): (E.W.) (8.3.2002) by S.I. 2002/333, **reg. 6(d)**; (S.) (8.3.2002) by S.S.I. 2002/50, **reg. 6(d)**; (E.) (18.6.2002) by S.I. 2002/890, **reg. 7(1)(c)**; (S.) (1.7.2002) by S.S.I. 2002/267, **reg. 7(1)(c)**; (W.) (2.8.2002) by S.I. 2002/1886, **reg. 7(1)(c)**; (E.) (5.8.2002 for certain purposes and otherwise 1.4.2004) by S.I. 2002/1817, **regs. 1(2)(3), 9(d)**; (S.) (23.9.2002 for certain purposes and otherwise 1.4.2004) by S.S.I. 2002/397, **regs. 1(2)(3), 8(d)**; (W.) (31.12.2002 for certain purposes and otherwise 1.4.2004) by S.I. 2002/2939, **regs. 1(2)(3), 9(d)**; (S.) (1.1.2003) by S.S.I. 2002/523, **reg. 5(1)(d)**; (W.) (9.1.2003) by S.I. 2002/3157, **reg. 5(1)(d)**; (E.) (13.1.2003) by S.I. 2002/3169, **reg. 5(1)(d)**
- C3** S. 21 applied (with modifications) (E.) (28.3.2003) by Fish Labelling (England) Regulations 2003 (S.I. 2003/461), **regs. 1, 10(c)**
- C4** S. 21 applied (with modifications) (S.) (28.3.2003) by The Fish Labelling (Scotland) Regulations 2003 (S.S.I. 2003/145), **regs. 1(1), 10(c)**
- C5** S. 21 applied (with modifications) (30.6.2003) by Contaminants in Food (England) Regulations 2003 (S.I. 2003/1478), **regs. 1, 7(1)(c)**
- C6** S. 21 applied (with modifications) (30.6.2003) by Fish Labelling (Wales) Regulations 2003 (S.I. 2003/1635), **regs. 1, 10**
- C7** S. 21 applied (with modifications) (1.7.2003) by Contaminants in Food (Scotland) Regulations 2003 (S.S.I. 2003/289), **regs. 1(1), 7(1)(c)**
- C8** S. 21 applied (with modifications) (12.7.2003) by Fruit Juices and Fruit Nectars (England) Regulations 2003 (S.I. 2003/1564), **regs. 1(b), 9(d)**
- C9** S. 21 applied (with modifications) (12.7.2003) by Fruit Juices and Fruit Nectars (Scotland) Regulations 2003 (S.S.I. 2003/293), **regs. 1(1), 10(d)**
- C10** S. 21 applied (with modifications) (12.7.2003) by Specified Sugar Products (England) Regulations 2003 (S.I. 2003/1563), **regs. 1, 9(d)**
- C11** S. 21 applied (with modifications) (17.7.2003) by Condensed Milk and Dried Milk (Scotland) Regulations 2003 (S.S.I. 2003/311), **regs. 1(1), 10(1)(d)** (with **reg. 3**)
- C12** S. 21 applied (with modifications) (17.7.2003) by Condensed Milk and Dried Milk (England) Regulations 2003 (S.I. 2003/1596), **regs. 1, 9(1)(d)** (with **reg. 11**)

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- C13** S. 21 applied (with modifications) (31.7.2003) by [The Contaminants in Food \(Wales\) Regulations 2003 \(S.I. 2003/1721\)](#), regs. 1, **7(1)(c)**
- C14** S. 21 applied (with modifications) (3.8.2003) by [The Cocoa and Chocolate Products \(Scotland\) Regulations 2003 \(S.S.I. 2003/291\)](#), regs. 1, **11(d)** (with reg. 4)
- C15** S. 21 applied (with modifications) (3.8.2003) by [The Cocoa and Chocolate Products \(England\) Regulations 2003 \(S.I. 2003/1659\)](#), regs. 1, **10(d)**
- C16** S. 21 applied (with modifications) (2.9.2003) by [Meat Products \(England\) Regulations 2003 \(S.I. 2003/2075\)](#), regs. 1(c), **8(d)** (with reg. 3)
- C17** S. 21 applied (with modifications) (25.9.2003) by [Honey \(England\) Regulations 2003 \(S.I. 2003/2243\)](#), regs. 1, **9(d)**
- C18** S. 21 applied (with modifications) (28.11.2003) by [Condensed Milk and Dried Milk \(Wales\) Regulations 2003 \(S.I. 2003/3053\)](#), regs. 1, **9(1)(d)** (with reg. 3)
- C19** S. 21 applied (with modifications) (28.11.2003) by [Specified Sugar Products \(Scotland\) Regulations 2003 \(S.S.I. 2003/527\)](#), regs. 1(1), **9** (with reg. 10)
- C20** S. 21 applied (with modifications) (28.11.2003) by [Honey \(Wales\) Regulations 2003 \(S.I. 2003/3044\)](#), regs. 1, **9(d)**
- C21** S. 21 applied (with modifications) (28.11.2003) by [Cocoa and Chocolate Products \(Wales\) Regulations 2003 \(S.I. 2003/3037\)](#), regs. 1, **10(d)**
- C22** S. 21 applied (with modifications) (28.11.2003) by [The Specified Sugar Products \(Wales\) Regulations 2003 \(S.I. 2003/3047\)](#), regs. 1, **9(d)**
- C23** S. 21 applied (with modifications) (28.11.2003) by [The Fruit Juices and Fruit Nectars \(Wales\) Regulations 2003 \(S.I. 2003/3041\)](#), regs. 1, **9(d)**
- C24** S. 21 applied (with modifications) (18.12.2003) by [Honey \(Scotland\) Regulations 2003 \(S.S.I. 2003/569\)](#), regs. 1(1), **10(d)** (with regs. 3, 11)
- C25** S. 21 applied (with modifications) (31.12.2003) by [Jam and Similar Products \(England\) Regulations 2003 \(S.I. 2003/3120\)](#), regs. 1, **9(d)** (with reg. 3)
- C26** S. 21 applied (with modifications) (4.2.2004) by [Meat Products \(Scotland\) Regulations 2004 \(S.S.I. 2004/6\)](#), regs. 1(1), **9(1)(d)**
- C27** S. 21 applied (with modifications) (5.3.2004) by [Jam and Similar Products \(Wales\) Regulations 2004 \(S.I. 2004/553\)](#), regs. 1, **9(1)(d)** (with reg. 3)
- C28** S. 21 applied (with modifications) (28.4.2004) by [Jam and Similar Products \(Scotland\) Regulations 2004 \(S.S.I. 2004/133\)](#), regs. 1(1), **10(d)**
- C29** S. 21 applied (with modifications) (31.5.2004) by [Meat Products \(Wales\) Regulations 2004 \(S.I. 2004/1396\)](#), regs. 1(c), **8(d)** (with reg. 3)
- C30** S. 21 applied (4.10.2004) by [Genetically Modified Food \(England\) Regulations 2004 \(S.I. 2004/2335\)](#), regs. 1(b), **6(1)(c)**
- C31** S. 21 applied (with modifications) (15.11.2004) by [Genetically Modified Food \(Scotland\) Regulations 2004 \(S.S.I. 2004/432\)](#), regs. 1(1), **6(1)(c)**
- C32** S. 21 applied (17.12.2004) by [Genetically Modified Food \(Wales\) Regulations 2004 \(S.I. 2004/3220\)](#), regs. 1(b), **6(1)(c)**
- C33** S. 21 applied (with modifications) (20.12.2004) by [Contaminants in Food \(England\) Regulations 2004 \(S.I. 2004/3062\)](#), regs. 1, **7(1)(c)**
- C34** S. 21 applied (with modifications) (25.12.2004) by [Contaminants in Food \(Scotland\) Regulations 2004 \(S.S.I. 2004/525\)](#), regs. 1(1), **7(1)(c)**
- C35** S. 21 applied (with modifications) (1.1.2005) by [General Food Regulations 2004 \(S.I. 2004/3279\)](#), regs. 1, **7(1)(b)**
- C36** S. 21 applied (with modifications) (12.1.2005) by [Food with Added Phytosterols or Phytostanols \(Labelling\) \(England\) Regulations 2004 \(S.I. 2004/3344\)](#), regs. 1, **10(1)(d)**
- C37** S. 21 applied (with modifications) (1.2.2005) by [Food Labelling \(Added Phytosterols or Phytostanols\) \(Scotland\) Regulations 2005 \(S.S.I. 2005/1\)](#), regs. 1(1), **10(1)(d)**
- C38** S. 21 applied (with modifications) (1.3.2005) by [The Contaminants in Food \(Wales\) Regulations 2005 \(S.I. 2005/364\)](#), regs. 1, **7(1)(c)**

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- C39** S. 21 amendment to earlier affecting provision SI 1995/77 reg. 23 (6.3.2005) by The Infant Formula and Follow-on Formula (Amendment) (Wales) Regulations 2004 (S.I. 2004/313), regs. 1, **9**
- C40** S. 21 applied (with modifications) by SI 1995/77 reg. 23 (as substituted (6.3.2005) by Infant Formula and Follow-on Formula (Amendment) (England) Regulations 2003 (S.I. 2003/3208), regs. 1, **9**)
- C41** S. 21 applied (with modifications) (6.3.2005) by The Processed Cereal-based Foods and Baby Foods for Infants and Young Children (England) Regulations 2003 (S.I. 2003/3207), regs. 1, **12(d)** (with reg. 3)
- C42** S. 21 amendment to earlier affecting provision SI 1995/77 reg. 23 (6.3.2005) by Infant Formula and Follow-on Formula Amendment (Scotland) Regulations 2004 (S.S.I. 2004/7), regs. 1(1), **9**
- C43** S. 21 applied (with modifications) (6.3.2005) by The Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Wales) Regulations 2004 (S.I. 2004/314), regs. 1, **12(d)** (with reg. 3)
- C44** S. 21 applied (with modifications) (6.3.2005) by Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004 (S.S.I. 2004/8), regs. 1(1), **12(d)**
- C45** S. 21 applied (with modifications) (26.3.2005) by Production of Bovine Collagen Intended for Human Consumption in the United Kingdom (England) Regulations 2005 (S.I. 2005/404), regs. 1, **8(b)**
- C46** S. 21 applied (with modifications) (29.4.2005) by Materials and Articles in Contact with Food (England) Regulations 2005 (S.I. 2005/898), regs. 1, **14(1)(c)**
- C47** S. 21 applied (with modifications) (30.4.2005) by Food with Added Phytosterols or Phytostanols (Labelling) (Wales) Regulations 2005 (S.I. 2005/1224), regs. 1, **10(1)(d)**
- C48** S. 21 applied (with modifications) (11.5.2005) by Production of Bovine Collagen Intended for Human Consumption in the United Kingdom (Scotland) Regulations 2005 (S.S.I. 2005/218), regs. 1(1), **8(b)**
- C49** S. 21 applied (with modifications) (21.5.2005) by Materials and Articles in Contact with Food (Scotland) Regulations 2005 (S.S.I. 2005/243), regs. 1(1), **14(1)** (with reg. 3)
- C50** S. 21 applied (with modifications) (1.6.2005) by Production of Bovine Collagen Intended for Human Consumption in the United Kingdom (Wales) Regulations 2005 (S.I. 2005/1397), art. 1 **reg. 8(b)**
- C51** S. 21 applied (16.6.2005) by Smoke Flavourings (Wales) Regulations 2005 (S.I. 2005/1350), regs. 1(b)(ii), **6(c)**
- C52** S. 21 applied (16.6.2005) by Smoke Flavourings (England) Regulations 2005 (S.I. 2005/464), regs. 1(b)(ii), **6**
- C53** S. 21 applied (with modifications) (24.6.2005) by The Materials and Articles in Contact with Food (Wales) Regulations 2005 (S.I. 2005/1647), regs. 1, **14(1)(c)** (with reg. 3)
- C54** S. 21 applied (with modifications) (1.7.2005) by Eggs (Marketing Standards) (Enforcement) (Scotland) Regulations 2005 (S.S.I. 2005/332), regs. 1(1), **15(1)(c)**
- C55** S. 21 applied (with modifications) (1.8.2005) by The Food Supplements (Wales) Regulations 2003 (S.I. 2003/1719), regs. 1, **11(d)** (with reg. 3)
- C56** S. 21 applied (with modifications) (1.8.2005) by The Food Supplements (England) Regulations 2003 (S.I. 2003/1387), regs. 1, **11(d)**
- C57** S. 21 applied (with modifications) (1.8.2005) by Food Supplements (Scotland) Regulations 2003 (S.S.I. 2003/278), regs. 1(1), **11(d)** (with regs. 3, 5)
- C58** S. 21 applied (with modifications) (7.11.2005) by The Bovine Products (Restriction on Placing on the Market) (Wales) Regulations 2005 (S.I. 2005/3051), regs. 1, **4(b)**
- C59** S. 21 applied (with modifications) (7.11.2005) by Bovine Products (Restriction on Placing on the Market) (England) Regulations 2005 (S.I. 2005/2719), regs. 1, **4(b)**
- C60** S. 21 applied (with modifications) (7.11.2005) by Bovine Products (Restriction on Placing on the Market) (Scotland) Regulations 2005 (S.S.I. 2005/470), regs. 1(1), **5(b)**
- C61** S. 21 applied (with modifications) (11.11.2005) by Tryptophan in Food (England) Regulations 2005 (S.I. 2005/2630), regs. 1, **8(d)**
- C62** S. 21 applied (with modifications) (11.11.2005) by The Tryptophan in Food (Wales) Regulations 2005 (S.I. 2005/3111), regs. 1, **8(d)**
- C63** S. 21 applied (with modifications) (11.11.2005) by Tryptophan in Food (Scotland) Regulations 2005 (S.S.I. 2005/479), regs. 1(1), **8(d)**
- C64** S. 21(1)(5)(6) applied (29.5.1992) by S.I. 1992/1122, **reg. 4** (which S.I. was revoked (24. 7. 1992) by S.I. 1992/1601, **reg. 6**)

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S. 21(1)(5)(6) applied (24.7.1992) by S.I. 1992/1601, **reg. 4**

**C65** S. 21(1)(5)(6) applied (with modifications) (4.9.1996) by S.I. 1996/2265, **reg. 7(3)** (which S.I. was revoked (15.3.1997) by S.I. 1997/389, **reg. 14**)

S. 21(1)(5)(6) applied (with modifications): (15.3.1997) by S.I. 1997/389, **reg. 10(3)** (which S.I. was revoked (1.8.1997 at 6.00 p.m.) by S.I. 1997/1905, **reg. 20**); (11.8.1997) by S.I. 1997/1729, **reg. 34(1)(d)**; (1.8.1997 at 6.00 p.m.) by S.I. 1997/1905, **reg. 16(3)**

**Status:**

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