

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

FOOD STANDARDS ACT 1999

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part III: Other functions

Schedule 5: Minor and Consequential Amendments

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

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Health in England and Wales, and the Department of Agriculture in Northern Ireland, to make emergency orders (in Scotland this function has transferred to Scottish Ministers). On coming into force of the rest of the Act, references to the Minister of Agriculture, Fisheries and Food are removed, so the functions in Part I of FEPA 1985 may only be exercised by the Secretary of State (or the Department of Health and Social Services in Northern Ireland).

212. *Paragraphs 7, 8 and 10-21* amend the Food Safety Act 1990, removing references to the Minister of Agriculture, Fisheries and Food. They also provide for the powers described in Part I of Schedule 3 to be exercised by the Agency itself.
213. *Paragraphs 9 and 22* concern the Isles of Scilly. Due to the slightly anomalous position of the Scilly Isles in the local government structure, the 1990 Act provided that its application to the Isles could be subject to such exceptions and modifications as Ministers may direct. In practice however, the only modification which has been necessary is to provide for the council of the Isles of Scilly to be the enforcement authority in the Isles. This has now been made explicit by amendment to s 5 of the 1990 Act (Schedule 5 paragraph 7), so s 57(1) is no longer necessary and ceases to have effect (paragraph 22).
214. *Paragraph 10* amends section 6 (enforcement) of the Food Safety Act 1990. It provides for the Secretary of State to direct that a duty imposed on an enforcement body under the Act should instead be discharged by himself or by the Minister of Agriculture, Fisheries and Food or by the Agency. It also provides for the Agency to be one of the bodies which may be named as an enforcement body in regulations made under section 6 of the 1990 Act (it is envisaged that this power will be used for instance in relation to the Meat Hygiene Service, which will become part of the Food Standards Agency). Amendments also provide for the Secretary of State to take over a prosecution begun by another person under the Food Safety Act 1990 (this replaces a similar provision in the current Act) or for the Agency to take over such proceedings with the consent of that person or at the direction of the Secretary of State.
215. *Paragraph 11* amends section 13 of the Food Safety Act 1990 (emergency control orders). Power to make emergency control orders transfers to the Secretary of State, although this may be delegated to the Agency under section 17 of this Act. The amendments in paragraph 9 allow either the Agency or the Secretary of State to consent to exemptions, give directions to prevent food subject to an order being used commercially, and to recover costs from persons failing to comply with an order.
216. *Paragraph 16* concerns offences by Scottish partnerships. Section 36 of the Food Safety Act 1990 provides that, where an offence under the Act committed by a body corporate is proved to have been committed with the consent or connivance of (or be attributable to any neglect on the part of) a director, manager, secretary or similar office holder of the body, or by a person purporting to act in such a capacity, that person (as well as the body corporate) is deemed guilty of the offence. It has been held that in Scotland the words “body corporate” include a partnership which in Scots law has an identity separate from that of the individual partners. This section adds a new Section 36A to provide that individual partners may be charged along with the partnership in respect of any offence committed under the Act.
217. *Paragraph 17* amends section 40 of the Food Safety Act 1990 in the following ways. *Subparagraph (2)* inserts a new subsection (1A) to give the Agency power, after consulting the Secretary of State, to issue a direction to a local authority to ensure that it complies with a statutory code of practice issued under Section 40. *Subparagraph (3)* amends section 40(2)(b) to require local authorities to comply with a direction of the Agency, but the power of Ministers to direct is removed. *Subparagraph (4)* amends section 40(3) so that the Agency rather than Ministers can obtain a court order forcing a local authority to take appropriate action where it fails to comply with a direction but it must consult the Secretary of State before doing so. *Subparagraphs (5) and (6)* amend section 40(4) of the Food Safety Act, concerning consultation of interested parties

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before issuing codes of practice. The Secretary of State is required to have regard to the Agency's advice on these matters. The requirement to consult relevant organisations is retained, although consultation carried out by the Agency may be taken as meeting this obligation.

218. *Paragraph 18* amends section 41 of the Food Safety Act 1990 by removing from the Minister of Agriculture, Fisheries and Food the power to require local authorities to provide information that is relevant to their enforcement work carried out under the Act and assigns that power to the Agency.
219. *Paragraph 19* amends section 42 of the Food Safety Act 1990 by empowering the Secretary of State to direct the Agency (as an alternative to designating another local authority) to carry out the enforcement functions of a local authority that has failed to meet its enforcement obligations.
220. *Paragraph 20* amends section 45 of the Food Safety Act. Shortly after the enactment of the 1990 Act, the Parliamentary Joint Committee on Statutory Instruments expressed some doubt as to whether section 45 allowed for charges to be imposed on application for a licence, rather than on its granting. This amendment makes it clear that section 45 enables Ministers to provide for charges to be imposed on application (for example, for a licence) and not just on completion of a transaction.
221. *Paragraph 21* makes amendments to section 48 of the Food Safety Act 1990, concerning consultation before legislation is made under that Act by the Secretary of State. These are similar in effect to those described in paragraph 17(5) and (6) above.
222. Schedule 1 to the Food Safety Act 1990 supplements the subject areas in which regulations may be made by Ministers under section 16 of that Act. *Paragraph 23* provides additionally for regulations to control substances and activities relating to the farm production of food sources* which may have an impact on food safety or otherwise affect the interests of consumers in relation to food. The effect of this amendment is therefore to extend the scope of the Food Safety Act 1990 to cover the whole of the primary production end of the food chain. However, these powers will normally be used in relation to on-farm activity only where existing powers available to, for example, Agriculture or Environment Ministers are unavailable or insufficient.
 - *Food source* is defined in the Food Safety Act 1990 (section 3) as any growing crop or live animal, bird or fish from which food is intended to be derived (whether by harvesting, slaughtering, milking, collecting eggs or otherwise).
223. *Paragraph 25* revokes any byelaws made (or having effect as if made) under section 15 of the Food Act 1984 and which were continued in force under the Food Safety Act 1990. That Act abolished the power to make food byelaws, subject to a provision which saved those in force immediately before the Act came into force. Byelaws related to miscellaneous matters are no longer needed in view of the current legal provisions for food safety and standards.
224. *Paragraphs 26 to 42* make minor or consequential amendments to the Food Safety (Northern Ireland) Order 1991 broadly similar to the amendments made to the Food Safety Act 1990 by paragraphs 7 to 25.
225. *Paragraph 43* amends provisions of the Radioactive Substances Act 1993 (RSA 1993) to make the Agency the statutory consultee of the Environment Agency (EA) and the Scottish Environment Protection Agency (SEPA) on authorisations to dispose of radioactive waste, as well as on the revocation and variation of such authorisations. This will enable the Agency to influence the control of an important potential hazard to food safety. The Agency will replace the Minister of Agriculture, Fisheries and Food and the Secretary of State for Wales in these roles as far as England and Wales are concerned and the Secretary of State for Scotland in relation to authorisations issued by SEPA.

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226. *Subparagraph (2)* amends the relevant provisions of RSA 1993 to make the Agency the statutory consultee on authorisations in place of Ministers.
227. *Subparagraph (3)* does the same in respect of the revocation and variation of authorisations.
228. *Subparagraphs (4) and (6)* remove references to the Minister of Agriculture, Fisheries and Food from those parts of the RSA 1993 where he no longer has a function.
229. *Subparagraph (5)* amends section 25 of RSA 1993. That section allows the Secretary of State for the Environment, Transport and the Regions to restrict access to information in applications under the Act on grounds of national security. The section (prior to the amendment made by this Act) makes it clear that this power did not release the EA or SEPA from their duty to consult Ministers on applications for discharges and did not apply to any information sent by the EA or SEPA to Ministers. The amendment made by this paragraph simply relates the provision to the Agency rather than to Ministers, to ensure that the Agency is able properly to exercise the consultation function given to it by subsections (2) and (3).
230. Before setting charges in relation to licence applications, including those under the RSA 1993, the Environment Agencies are currently obliged to take into account the costs and expenses of the Minister of Agriculture, Fisheries and Food and certain of those of the Scottish and Welsh administrations (i.e. those performed by the Scottish and Welsh administrations which would be performed by the Minister of Agriculture, Fisheries and Food in England). The Minister's and Secretary of State's functions under the RSA 1993 are being transferred to the Agency, and, accordingly, the amendments to Environment Act 1995 made in *paragraph 44* specify that it is the Agency's costs and expenses that must be taken into account.
231. As the Minister of Agriculture, Fisheries and Food will no longer have responsibilities in this area *subparagraph (4)* removes the need for that Minister to approve any relevant charging proposals.
232. Fees charged by the Environment Agencies for licences may include an element to meet the costs incurred by the Agency. *Subparagraphs (5) and (6)* allow for these sums to be transferred from the Environment Agency to the Agency after collection.
233. *Paragraph 45* amends Schedule 5 of the Government of Wales Act 1998 to add the Agency, and its advisory committee for Wales, to the list of bodies whose members and staff can be required to attend or produce documents for the National Assembly for Wales.