

*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

Section 19: Publication etc. by the Agency of advice and information

68. This section empowers the Agency to publish advice given by it in accordance with its general functions under sections 6 (development of food policy and provision of advice, etc. to public authorities) and 7 (provision of advice, information and assistance to other persons) or information obtained by it as a result of its observations or enforcement monitoring (sections 10 and 12). It also enables the Agency to publish any other information it holds.
69. The Agency's express ability to publish any of its advice to Ministers will be an important factor in its influence and independence: although Ministers would not be obliged to accept the Agency's advice, they would normally be expected to explain their reasons for not doing so.
70. It is envisaged that the Agency will normally wish to publish much of its advice and information. There are however certain limited circumstances in which publication would be inappropriate. For example, the provisions of the Data Protection Act 1998 will continue to apply in relation to personal information (*subsection (2)*). *Subsection (3)* also makes clear that the Agency's power to publish information does not automatically override prohibitions on publication in existing legislation or EU obligations that prohibit the publication of certain kinds of information. Section 25 nevertheless empowers the Secretary of State and the devolved authorities to make orders relaxing or lifting statutory prohibitions where these prevent the Agency from carrying out its functions effectively or from publishing information that is clearly in the public interest.
71. *Subsection (4)* provides that in deciding to publish any advice or information, the Agency will first have to consider whether the public interest in disclosure (for example, in terms of promoting openness or in making people aware of health risks) is outweighed by confidentiality considerations (such as personal privacy or commercial confidence).
72. *Subsection (5)* provides that the duty to take account of any consideration of confidentiality under *subsection (4)* does not apply to information relating to the performance of enforcement authorities or people acting on behalf of enforcement authorities. However, in respect of information on, for example, the activities of a business that was obtained by the Agency while monitoring a local authority's enforcement work, the test in *subsection (4)* would apply.
73. *Subsection (7)* makes clear that the Agency's power to publish is limited only by those duties and considerations that are set down in *subsections (2), (3) and (4)*.
74. *Subsection (9)* provides for the Agency to disclose information to another public authority, subject to the same considerations as set out in this section. Therefore, for

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example, the Agency could pass on confidential information to enforcement authorities to assist them in carrying out their enforcement functions.