

# Food (Scotland) Bill

[AS INTRODUCED]

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**Explanatory Notes, together with other accompanying documents, are printed separately as SP Bill 48-EN. A Policy Memorandum is printed separately as SP Bill 48-PM.**

# Food (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to establish Food Standards Scotland and make provision as to its functions; to amend the law in relation to food; to enable provision to be made in relation to animal feeding stuffs; to make provision for administrative sanctions in relation to offences under the law in relation to food; and for connected purposes.

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## **PART 1**

### **FOOD STANDARDS SCOTLAND**

#### *Food Standards Scotland*

#### **1 Establishment**

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There is established a body corporate called Food Standards Scotland or, in Gaelic, Inbhe-Bidhe Alba.

#### **2 Objectives**

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- (1) The objectives of Food Standards Scotland are—
  - (a) to protect the public from risks to health which may arise in connection with the consumption of food,
  - (b) to improve the extent to which members of the public have diets which are conducive to good health,
  - (c) to protect the other interests of consumers in relation to food.
- (2) The risks referred to in subsection (1)(a) include risks caused by the way in which food is produced or supplied.
- (3) Food Standards Scotland must so far as reasonably practicable perform its functions in a way—
  - (a) which is compatible with its objectives, and
  - (b) which it considers most appropriate for the purpose of meeting those objectives.

20

#### **3 General functions**

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- (1) The general functions of Food Standards Scotland are—

- (a) to develop (and assist the Scottish Ministers and public bodies and office-holders to develop) policies in relation to food matters and animal feeding stuffs matters,
- (b) to advise, inform and assist the Scottish Ministers and public bodies and office-holders and other persons in relation to food matters and animal feeding stuffs matters,
- (c) to keep the public adequately informed about and advised in relation to matters which significantly affect their capacity to make informed decisions about food matters,
- (d) to keep users of animal feeding stuffs adequately informed about and advised in relation to matters which significantly affect their capacity to make informed decisions about animal feeding stuffs matters, and
- (e) to monitor the performance of enforcement authorities in enforcing food legislation.
- (2) Food Standards Scotland must so far as reasonably practicable comply with a request by the Scottish Ministers that—
- (a) in pursuance of subsection (1)(a), it develops a policy, or assists the Scottish Ministers or a public body or office-holder to develop a policy, in relation to a particular matter,
- (b) in pursuance of subsection (1)(b), it gives advice, information or assistance to the Scottish Ministers, a public body or office-holder or another person, in relation to a particular matter,
- (c) in pursuance of subsection (1)(c), it informs or advises the public in relation to a particular matter,
- (d) in pursuance of subsection (1)(d), it informs or advises users of animal feeding stuffs in relation to a particular matter.

#### **4 Governance and accountability**

- (1) Food Standards Scotland must so far as reasonably practicable operate in a way which—
- (a) is proportionate, transparent and accountable,
- (b) constitutes good decision-making practice,
- (c) develops and maintains effective links with the persons mentioned in subsection (3), and
- (d) is consistent with any other principle of good governance which appears to it to constitute best practice.
- (2) “Good decision-making practice” means—
- (a) consulting people who may be affected by decisions before taking them,
- (b) having good information on which to take decisions and taking decisions based on that information,
- (c) recording decisions and the reasons for them, and
- (d) making decisions and the reasons for them publicly available.
- (3) The persons referred to in subsection (1)(c) are—
- (a) the Scottish Ministers,

- (b) public bodies and office-holders with functions in relation to food matters or animal feeding stuffs matters.

## **5 Statement on performance of functions**

- (1) Food Standards Scotland must prepare for approval by the Scottish Ministers a statement setting out how it intends to perform its functions.
- (2) The statement must include information on how Food Standards Scotland intends—
  - (a) to meet its objectives, and
  - (b) to operate in accordance with section 4.
- (3) The statement must be submitted to the Scottish Ministers by such time as they may direct.
- (4) The Scottish Ministers may approve the statement with such modifications as they consider appropriate.
- (5) Before approving the statement with modifications the Scottish Ministers must consult Food Standards Scotland.
- (6) As soon as practicable after the statement is approved under subsection (4), Food Standards Scotland must—
  - (a) lay a copy of it before the Scottish Parliament, and
  - (b) publish it (in such manner as Food Standards Scotland considers appropriate).
- (7) Food Standards Scotland—
  - (a) must review the statement from time to time, and
  - (b) may in consequence prepare and submit to the Scottish Ministers a revised statement.
- (8) Subsections (2) and (4) to (7) apply to a revised statement as they apply to the original statement.

## *Membership*

## **6 Number and appointment of members**

- (1) Food Standards Scotland is to consist of—
  - (a) a person appointed by the Scottish Ministers to chair Food Standards Scotland, and
  - (b) no fewer than 3 nor more than 7 other members appointed by the Scottish Ministers.
- (2) A person may not be appointed as a member if the person is—
  - (a) a member of the Scottish Parliament,
  - (b) a member of the House of Commons,
  - (c) a member of the European Parliament,
  - (d) an office-holder in the Scottish Administration,
  - (e) a councillor of any local authority,
  - (f) an employee of any local authority.

- (3) The Scottish Ministers must make appointments of members of Food Standards Scotland in a manner which encourages equal opportunities and in particular the observance of the equal opportunity requirements.
- 5 (4) In subsection (3), “equal opportunities” and “equal opportunity requirements” have the same meanings as in Section L2 of Part 2 of Schedule 5 to the Scotland Act 1998.
- (5) Membership is (subject to sections 7 and 17) for such period and on such terms and conditions as the Scottish Ministers may determine.
- (6) A member may resign by informing the Scottish Ministers in writing to that effect.
- (7) A person may be re-appointed on, or after, ceasing to be a member.
- 10 (8) The Scottish Ministers may assign to one of the members appointed under subsection (1)(b)—
- (a) the function of deputising for the person appointed under subsection (1)(a),
- (b) the function of chairing Food Standards Scotland during any period when there is no person appointed under subsection (1)(a).
- 15 (9) A member to whom such a function is assigned—
- (a) is assigned the function for such period as the Scottish Ministers may specify in the assignment,
- (b) may resign the assignment by informing the Scottish Ministers in writing to that effect,
- 20 (c) is assigned and ceases to be assigned the function in accordance with such terms and conditions as the Scottish Ministers may determine.

## 7 **Early ending of membership**

- (1) A person’s membership of Food Standards Scotland ends if the person becomes—
- 25 (a) a member of the Scottish Parliament,
- (b) a member of the House of Commons,
- (c) a member of the European Parliament,
- (d) an office-holder in the Scottish Administration,
- (e) a councillor of any local authority,
- (f) an employee of any local authority.
- 30 (2) The Scottish Ministers may end a person’s membership of Food Standards Scotland if—
- (a) the person becomes an undischarged bankrupt, or
- (b) the Scottish Ministers are satisfied that the person—
- (i) has, without the permission of Food Standards Scotland, been absent from its meetings for a period longer than 6 consecutive months,
- 35 (ii) is unable to perform the functions of a member, or
- (iii) is unsuitable to continue as a member.

## 8 **Remuneration and expenses of members**

- (1) A member of Food Standards Scotland is entitled to—

- (a) such remuneration as the Scottish Ministers may determine,
- (b) such sums as the Scottish Ministers may determine to reimburse or compensate the member in relation to expenses properly incurred in the exercise of the member's functions.

5 (2) It is for Food Standards Scotland to pay any remuneration and other sums to which its members are entitled by virtue of subsection (1).

### *Staff*

#### **9 Chief executive**

- (1) Food Standards Scotland is to have, as a member of staff, a chief executive.
- 10 (2) The first chief executive is to be appointed by the Scottish Ministers on such terms and conditions as they determine.
- (3) Before appointing the first chief executive, the Scottish Ministers must consult Food Standards Scotland.
- 15 (4) Food Standards Scotland may, with the approval of the Scottish Ministers, appoint subsequent chief executives on such terms and conditions as it, with the approval of the Scottish Ministers, determines.

#### **10 Other staff**

- (1) Food Standards Scotland may appoint staff other than the chief executive.
- 20 (2) Members of staff are to be appointed on such terms and conditions as Food Standard Scotland, with the approval of the Scottish Ministers, determines.
- (3) The number of staff is not to exceed any maximum that the Scottish Ministers may determine.

### *Operational matters*

#### **11 Proceedings**

- 25 (1) It is for Food Standards Scotland to regulate its procedure (including any quorum).
- (2) The validity of any proceedings or actions of Food Standards Scotland is not affected by—
  - (a) any vacancy in its membership,
  - (b) any defect in the appointment of a member.

#### **12 Committees**

- 30 (1) Food Standards Scotland may establish committees.
- (2) A committee established by Food Standards Scotland may include as a member a person who is not a member of Food Standards Scotland.
- (3) Such a person is entitled to—
  - 35 (a) such remuneration as Food Standards Scotland may determine,

(b) such sums as Food Standards Scotland may determine to reimburse or compensate the person in relation to expenses properly incurred in the exercise of the person's functions.

5 (4) It is for Food Standards Scotland to pay any remuneration and other sums to which such a person is entitled by virtue of subsection (3).

(5) It is for Food Standards Scotland to regulate the procedure (including any quorum) of any committee established by it.

### **13 Delegation of functions**

(1) Food Standards Scotland may authorise the exercise of any of its functions by—

10 (a) one (or some) of its members,

(b) a committee established by it.

(2) Food Standards Scotland may authorise the exercise of any of its functions (subject to subsection (3)) by—

(a) a member of its staff, or

15 (b) any other person.

(3) Subsection (2) does not apply in relation to—

(a) the function of giving authorisations under section 20(1),

(b) the function of giving authorisations under section 27(1).

20 (4) Authorisation for the purposes of subsection (1) or (2) may be general or limited to the exercise of the function in specific circumstances.

(5) This section does not affect the responsibility of Food Standards Scotland for the exercise of its functions.

### **14 Annual and other reports**

25 (1) As soon as practicable after the end of each financial year, Food Standards Scotland must prepare and publish an annual report on the exercise of its functions during that financial year.

(2) An annual report must contain Food Standards Scotland's assessment of its performance of its functions in relation to—

30 (a) the statement of performance of functions under section 5 applying during the financial year to which the annual report relates, or

(b) if more than one statement of performance of functions applied during the financial year, each such statement for the period during the financial year when the statement applied.

35 (3) Subject to subsections (1) and (2), it is for Food Standards Scotland to determine the content of an annual report.

(4) It is for Food Standards Scotland to determine—

(a) the form of an annual report, and

(b) the manner of publication.

- (5) As soon as practicable after publishing an annual report, Food Standards Scotland must—
- (a) send a copy of the report to the Scottish Ministers,
  - (b) lay a copy of the report before the Scottish Parliament.
- 5 (6) Food Standards Scotland may lay a copy of any other report prepared by it before the Scottish Parliament.

## **15 General powers**

- (1) Food Standards Scotland may do anything which it considers necessary or expedient for the purposes of or in connection with its functions.
- 10 (2) Food Standards Scotland may not however—
- (a) determine the location of its office without the approval of the Scottish Ministers,
  - (b) make charges for facilities or services provided by it at the request of any person which exceed the reasonable cost of providing the facilities or services concerned.

### *Legislation relating to public bodies*

## **16 Application of legislation relating to public bodies**

- 15 (1) In the Ethical Standards in Public Life etc. (Scotland) Act 2000, in schedule 3 (devolved public bodies), after the entry relating to the Crofting Commission insert—
- “Food Standards Scotland”.
- 20 (2) In the Scottish Public Services Ombudsman Act 2002, in schedule 2 (listed authorities) after paragraph 22 insert—
- “22A Food Standards Scotland.”.
- (3) In the Freedom of Information (Scotland) Act 2002, in schedule 1 (Scottish public authorities) after paragraph 7A insert—
- “7B Food Standards Scotland.”.
- 25 (4) In the Public Appointments and Public Bodies etc. (Scotland) Act 2003, in schedule 2 (specified authorities) after the entry relating to the Crofting Commission insert—
- “Food Standards Scotland”.
- (5) In the Public Services Reform (Scotland) Act 2010—
- 30 (a) in schedule 8 (information on exercise of public functions: listed public bodies), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—
- “Food Standards Scotland”,
- (b) in schedule 19 (persons subject to the user focus duty), after the entry relating to the Drinking Water Quality Regulator for Scotland insert—
- 35 “Food Standards Scotland”,
- (c) in schedule 20 (persons subject to the duty of co-operation), after the entry relating to the Accounts Commission for Scotland insert—
- “Food Standards Scotland”.

*Step-in powers***17 Serious failure**

- (1) This section applies where the Scottish Ministers consider that there has been a serious failure by Food Standards Scotland to exercise any of its functions.
- 5 (2) The Scottish Ministers may give Food Standards Scotland such directions as they consider appropriate to remedy the failure.
- (3) But before doing so, the Scottish Ministers must consult Food Standards Scotland.
- (4) A direction under this section—
- 10 (a) must be in writing,
- (b) must include a statement summarising the reasons for giving it.
- (5) The Scottish Ministers must publish any direction under this section (in such manner as they consider appropriate).
- (6) If Food Standards Scotland fails to comply with a direction under this section, the Scottish Ministers may give effect to it (and for that purpose, may exercise any function of Food Standards Scotland in place of it).
- 15 (7) If Food Standards Scotland fails to comply with a direction under this section, the Scottish Ministers—
- (a) may end the membership of all its members, and
- 20 (b) may, until new members are appointed, exercise any function of Food Standards Scotland in place of it (or appoint any other person to do so).

*Acquisition of information***18 Duty to acquire, compile and keep under review relevant information**

- (1) For the purpose of enabling it to perform its other functions effectively and to operate in accordance with section 4, Food Standards Scotland is to acquire, compile and keep under review information about food matters and animal feeding stuffs matters.
- 25 (2) The function in subsection (1) includes in particular—
- (a) monitoring developments in science, technology and other fields of knowledge relating to food matters and animal feeding stuffs matters,
- 30 (b) carrying out, commissioning or co-ordinating research on food matters and animal feeding stuffs matters.

**19 Observations with a view to obtaining information**

- (1) For the purpose of exercising its function under section 18, Food Standards Scotland may carry out observations (or arrange for observations to be carried out on its behalf by any other person) with a view to obtaining information about—
- 35 (a) any aspect of the production or supply of food or food sources, or the consumption of food, or
- (b) any aspect of the production, supply or use of animal feeding stuffs.

(2) The information which may be sought through such observations includes in particular information about—

- (a) food premises, food businesses or commercial operations being carried out in relation to food, food sources or contact materials,
- (b) agricultural premises, agricultural businesses or agricultural activities,
- (c) premises, businesses or operations involved in fish farming,
- (d) premises, businesses or operations involved in the production, supply or use of animal feeding stuffs.

(3) In this section—

“agricultural activity” has the same meaning as in the Agriculture Act 1947,

“agricultural business” has the same meaning as in section 1 of the Farm Land and Rural Development Act 1988,

“agricultural premises” means any premises used for the purposes of an agricultural business.

## **20 Powers for persons carrying out observations**

(1) Any member of staff or other individual may, if authorised to do so by Food Standards Scotland, exercise the powers specified in subsection (2) for the purpose of carrying out observations under section 19 in relation to a particular matter.

(2) The powers are—

- (a) entering premises (other than a dwelling house) at a reasonable time,
- (b) taking samples of any articles or substances on the premises,
- (c) taking samples from any food source on the premises,
- (d) inspecting and copying any information in a recorded form on the premises which relates to a business which is the subject of the observations (and where such information is in electronic form, requiring the information to be produced in a legible form in which it may be copied or taken away),
- (e) requiring any person carrying on a business which is the subject of the observations to provide such facilities or information and such other assistance as the authorised person reasonably requests.

(3) The reference in subsection (2)(d) to information which relates to a business includes a reference to information which—

- (a) relates to the health of a person who has, may have or may come into contact with food or food sources in the course of that person’s work for the business, and
- (b) was acquired or compiled for the purpose of assessing, or is kept for the purpose of recording, matters affecting the person’s suitability for working in the production or supply of food or food sources (including any risks to public health which may arise if the person comes into contact with any food or food source).

(4) An authorisation under subsection (1)—

- (a) must be in writing,

(b) may include limitations or conditions (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation).

5 (5) The powers specified in subsection (2) may be exercised only if it appears to the authorised person to be necessary to do so for the purpose of carrying out the observations concerned.

(6) An authorised person must if so required—

(a) produce evidence of the person’s identity and authorisation before exercising a power in pursuance of the authorisation,

10 (b) provide a document identifying any sample taken, or information copied, under those powers.

(7) In this section, “authorised person” means a person authorised under subsection (1).

## 21 Offences in relation to section 20

15 (1) Where subsection (2) applies, an authorised person commits an offence if the person makes use of or discloses to any other person any information obtained while on premises entered in exercise of the power in section 20(2)(a).

(2) This subsection applies if—

(a) the information relates to a trade secret, and

20 (b) the information is used or the disclosure is made other than in performance of the authorised person’s duty.

(3) A person commits an offence if the person—

(a) intentionally obstructs an authorised person in exercising a power in section 20(2)(a), (b), (c) or (d),

25 (b) fails without reasonable excuse to comply with any requirement imposed under section 20(2)(e), or

(c) in purported compliance with a requirement imposed under section 20(2)(e)—

(i) provides information which the person knows to be false or misleading in a material way, or

30 (ii) recklessly provides information which is false or misleading in a material way.

(4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) In this section, “authorised person” means a person authorised under section 20(1).

### *Enforcement action*

## 22 Setting performance standards

35 (1) For the purpose of carrying out its function under section 3(1)(e), Food Standards Scotland may determine standards of performance for enforcement authorities in enforcing food legislation.

(2) Different standards may be determined in relation to—

- (a) different enforcement authorities (or types of enforcement authorities),
  - (b) different food legislation (or types of food legislation).
- (3) Food Standards Scotland may vary or revoke any standards determined under subsection (1).

5     **23     Reporting own enforcement activities**

- (1) Food Standards Scotland must include in each annual report it prepares a report on—
- (a) its activities during the financial year to which the report relates in enforcing any food legislation for which it is the enforcement authority, and
  - (b) its performance in relation to any standards determined under section 22(1) applying to those activities.
- 10
- (2) In this section, “annual report” means a report prepared under section 14(1).

**24     Reporting on enforcement action by others**

- (1) In consequence of the exercise of its function under section 3(1)(e), Food Standards Scotland may make a report to any enforcement authority on the authority’s performance in enforcing any food legislation.
- 15
- (2) A report under subsection (1) may include guidance as to action which Food Standards Scotland considers—
- (a) is necessary to enable the enforcement authority to meet any standards determined under section 22(1) which apply, or
  - (b) otherwise, would help to improve the performance of the authority.
- 20
- (3) Food Standards Scotland may direct an authority to which a report has been made under subsection (1)—
- (a) to arrange for the publication (in such manner as may be specified) of—
    - (i) the report, or
    - (ii) specified information relating to the report, or
  - (b) to notify Food Standards Scotland (within such period as may be specified) of what action the authority has taken or proposes to take in response to the report.
- 25
- (4) In subsection (3), “specified” means specified in the direction.

**25     Power to request information in relation to enforcement action**

- 30     (1) For the purpose of carrying out its function under section 3(1)(e) in relation to any enforcement authority, Food Standards Scotland may require a person mentioned in subsection (2)—
- (a) to provide Food Standards Scotland with any information which it has reasonable cause to believe that the person is able to give, or
  - (b) to make available to Food Standards Scotland for inspection any information in a recorded form which it has reasonable cause to believe is held by that person or is otherwise within that person’s control (and where such information is in electronic form, to make it available in a legible form).
- 35
- (2) A requirement under subsection (1) may be imposed on—

- (a) the enforcement authority, or any member, officer or employee of the authority, or
  - (b) a person subject to any duty under food legislation (being a duty enforceable by an enforcement authority) or any officer or employee of such a person.
- (3) Food Standards Scotland may copy any information made available to it in pursuance of a requirement under subsection (1)(b).

## 26 Offences in relation to section 25

- (1) A person commits an offence if the person—
- (a) fails without reasonable excuse to comply with any requirement imposed under section 25(1), or
  - (b) in purported compliance with a requirement imposed under section 25(1)—
    - (i) provides information which the person knows to be false or misleading in a material way, or
    - (ii) recklessly provides information which is false or misleading in a material way.
- (2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## 27 Powers for persons monitoring enforcement action

- (1) Any member of staff or other individual may, if authorised to do so by Food Standards Scotland, exercise the powers specified in subsection (2) for the purpose of carrying out the function under section 3(1)(e) in relation to any enforcement authority.
- (2) The powers are—
- (a) entering any premises mentioned in subsection (3) at any reasonable time in order to inspect the premises or anything which may be on them,
  - (b) taking samples of any articles or substances on the premises,
  - (c) inspecting and copying any information in a recorded form on the premises (and where such information is in electronic form, requiring the information to be produced in a legible form in which it may be copied or taken away),
  - (d) requiring any person present on the premises to provide such facilities or information and such other assistance as the authorised person reasonably requests.
- (3) The premises in relation to which the power in subsection (2)(a) may be exercised are—
- (a) any premises occupied by the enforcement authority (but see subsection (4)),
  - (b) any laboratory (or similar premises) at which work related to the enforcement of any food legislation has been carried out for the enforcement authority,
  - (c) any other premises (other than a dwelling house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable.
- (4) Subsection (3)(a) does not apply where the enforcement authority is the Scottish Ministers.
- (5) An authorisation under subsection (1)—

- (a) must be in writing,
- (b) may include limitations or conditions (including conditions relating to hygiene precautions to be taken while exercising powers in pursuance of the authorisation).

- 5 (6) An authorised person must if so required—
- (a) produce the authorisation before exercising a power mentioned in subsection (2),
  - (b) provide a document identifying any sample taken, or information copied, under any of those powers.
- (7) In this section, “authorised person” means a person authorised under subsection (1).

10 **28 Offences in relation to section 27**

- (1) Where subsection (2) applies, an authorised person commits an offence if the person makes use of or discloses to any other person any information obtained while on premises entered in exercise of the power in section 27(2)(a).

- (2) This subsection applies if—

- 15 (a) the information relates to a trade secret, and
- (b) the information is used or the disclosure is made other than in performance of the authorised person’s duty.

- (3) A person commits an offence if the person—

- 20 (a) intentionally obstructs an authorised person in exercising a power in section 27(2)(a), (b) or (c),

- (b) fails without reasonable excuse to comply with any requirement imposed under section 27(2)(d), or

- (c) in purported compliance with a requirement imposed under section 27(2)(d)—

- 25 (i) provides information which the person knows to be false or misleading in a material way, or

- (ii) recklessly provides information which is false or misleading in a material way.

- (4) A person who commits an offence under subsection (1) or (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- 30 (5) In this section, “authorised person” means a person authorised under section 27(1).

*Issuing guidance on food-borne diseases*

**29 Power to issue guidance on control of food-borne diseases**

- 35 (1) Food Standards Scotland may issue to the persons mentioned in subsection (3) guidance about the exercise, generally, of their functions in relation to matters connected with the management of outbreaks (or suspected outbreaks) of food-borne diseases.

- (2) “Food-borne diseases” means diseases of humans which are capable of being caused by the consumption of infected or otherwise contaminated food.

- (3) The persons referred to in subsection (1) are—

- (a) the Scottish Ministers,

- (b) public bodies and office-holders.
- (4) Different guidance may be issued to different persons or for different purposes.
- (5) Food Standards Scotland must publish any such guidance (in such manner as it considers appropriate).
- 5 (6) A person to whom any such guidance is issued must have regard to the guidance in exercising any function to which it relates.
- (7) The power to issue guidance under subsection (1) is without prejudice to the other powers of Food Standards Scotland.

*Information sharing*

10 **30 Publication and disclosure of advice and information**

- (1) Food Standards Scotland may—
  - (a) publish (in such manner as it considers appropriate), or
  - (b) disclose to the Scottish Ministers or a public body or office-holder, any material to which this section applies.
- 15 (2) This section applies to—
  - (a) any advice given by Food Standards Scotland under section 3,
  - (b) any information obtained by Food Standards Scotland through—
    - (i) monitoring under section 3, or
    - (ii) observations under section 19, or
  - 20 (c) any other information in the possession of Food Standards Scotland (whatever the source).
- (3) Subsection (1) does not authorise publication or disclosure of material which—
  - (a) is prohibited by an enactment, or
  - (b) would constitute or be punishable as a contempt of court.
- 25 (4) But, otherwise, the powers in subsection (1) are exercisable free from any prohibition on publication or disclosure (as the case may be) which would apply.
- (5) Before deciding to exercise a power in subsection (1) in relation to any particular material, Food Standards Scotland must consider whether the public interest in the publication or disclosure of the material concerned is outweighed by any considerations of confidentiality attaching to it.
- 30 (6) Where the material relates to the performance of enforcement authorities, or particular enforcement authorities, in enforcing food legislation, subsection (5) applies only so far as the material relates to a person other than—
  - (a) an enforcement authority, or
  - 35 (b) a member, officer or employee of an enforcement authority acting in that person's capacity as such.

*Consequential provision*

**31 Certain functions of Food Standards Agency ceasing to be exercisable**

- (1) The relevant functions of the Agency under the 1999 Act cease to be exercisable.
- (2) In subsection (1), “relevant functions of the Agency” has the same meaning as in section 35 of the 1999 Act.

**PART 2**

FOOD AND FEEDING STUFFS

*Food information*

**32 Food information**

After section 15 of the 1990 Act insert—

*“Food information*

**15A Meaning of “food information” etc.**

In this Act—

- (a) “food information” has the same meaning as it has in Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers;
- (b) “food information law” means any enactment relating to food information as the Scottish Ministers may by regulations specify.

**15B Contravention of food information law: seizure of food etc.**

- (1) This section applies where it appears to an authorised officer of a food authority, on an inspection carried out under section 9 above or otherwise, that food information law is being, or has been, contravened in relation to any food intended for human consumption which is placed on the market within the meaning of Regulation (EC) No. 178/2002.
- (2) The authorised officer may—
- (a) give notice that, until the notice is withdrawn—
- (i) the food, or any specified portion of it, is not to be used for human consumption; and
- (ii) the food, or any specified portion of it, and any related food information, or any specified part of it, 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 the sheriff.
- (3) Notice under subsection (2)(a) above is to be given to—
- (a) the person in charge of the food; and
- (b) the owner of the food (where not the person in charge of the food).
- (4) But notice need not be given in pursuance of subsection (3)(b) above if the authorised officer, after making reasonable inquiries, does not know who owns the food.

- 
- (5) Any person who knowingly contravenes the requirements of a notice under subsection (2)(a) above commits an offence.
- (6) An authorised officer who gives a notice under subsection (2)(a) above must, as soon as is reasonably practicable and in any event within 21 days, determine whether or not food information law has been contravened in relation to the food in respect of which the notice was given.
- (7) After making a determination under subsection (6) above, the authorised officer must—
- (a) if satisfied that food information law has not been contravened, forthwith withdraw the notice; or
  - (b) if not so satisfied, seize the food and remove it in order to have it dealt with by the sheriff.
- (8) An authorised officer who seizes and removes food under subsection (2)(b) or (7)(b) above may also—
- (a) copy, make extracts of or take away any food information relating to the food that has been seized;
  - (b) where any such food information is in electronic form, require the information to be produced in a legible form in which it may be copied or taken away.
- (9) An authorised officer who seizes and removes food under subsection (2)(b) or (7)(b) above must inform the person in charge of the food and the owner of the food (where not the person in charge of the food) of the officer's intention to have it dealt with by the sheriff.
- (10) But the owner of the food need not be informed in pursuance of subsection (9) above if the authorised officer, after making reasonable inquiries, does not know who owns the food.
- (11) Any person who might be liable to a prosecution for contravening food information law in relation to any food seized and removed under (2)(b) or (7)(b) above is, if the person attends before the sheriff by whom the food falls to be dealt with, entitled to be heard and to call witnesses.
- (12) If it appears to the sheriff that food information law has been contravened in relation to any food seized and removed under subsection (2)(b) or (7)(b) above, the sheriff may make such order as the sheriff considers appropriate in respect of the food and any food information relating to it.
- (13) An order made under subsection (12) above may, in particular, order—
- (a) that the food be destroyed or otherwise disposed of so as to prevent it from being used for human consumption;
  - (b) that any food information relating to the food be modified, destroyed or otherwise disposed of;
  - (c) that any food which is fit for human consumption (and any related food information, modified as the sheriff considers appropriate) be—
    - (i) returned to the person who was in charge of the food; or
    - (ii) distributed to such other person as the sheriff may determine.
- (14) An order made under subsection (12) above—

(a) must, where the owner of the food is known, require the owner to meet any expenses reasonably incurred in connection with any destruction, modification, disposal, return or distribution of any food or food information which is carried out in pursuance of the order; and

5 (b) may require the owner of the food to meet any expenses reasonably incurred by the food authority in connection with any action taken by the authorised officer, or otherwise by or on behalf of the authority, in respect of any food or food information to which the order relates.

(15) Subsection (16) below applies if—

10 (a) a notice under subsection (2)(a) above is withdrawn; or

(b) the sheriff refuses to make an order under subsection (12) above in respect of any food seized and removed under subsection (2)(b) or (7)(b) above (or any food information which relates to it).

15 (16) Where this subsection applies, the food authority must compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(17) Any disputed question as to the right to or the amount of any compensation payable under subsection (16) above is to be submitted to arbitration for resolution.

20 (18) Until the Arbitration (Scotland) Act 2010 is in force in relation to any arbitration carried out in pursuance of subsection (17) above, that Act applies as if it were in force in relation to that arbitration.

### **15C Duty to report non-compliance with food information law**

25 (1) A food business operator must as soon as reasonably practicable inform Food Standards Scotland if the food business operator—

(a) is, or has been, in charge of any food which is intended for human consumption and has been placed on the market within the meaning of Regulation (EC) No. 178/2002; and

30 (b) considers or has reason to believe that food information law is being contravened in relation to the food.

(2) Any person who fails to comply with subsection (1) above shall be guilty of an offence.

(3) For the purposes of subsection (1)(a) above, a food business operator is to be treated as being, or having been, in charge of any food which it has—

35 (a) received;

(b) imported;

(c) produced;

(d) processed;

(e) manufactured;

40 (f) distributed; or

(g) otherwise placed on the market within the meaning of Regulation (EC) No. 178/2002.

- (4) For the purposes of this Act, “food business operator” is to be construed in accordance with Article 3 of Regulation (EC) No 178/2002.

**15D Power to obtain information**

- (1) This section applies where a food business operator has informed Food Standards Scotland under section 15C(1) above.
- (2) The food business operator must as soon as reasonably practicable provide any further information which is reasonably required by Food Standards Scotland which relates to—
- (a) the food (and any food information relating to it);
  - (b) the circumstances which led the food business operator to inform Food Standards Scotland under section 15C(1) above.
- (3) Any person who fails to comply with a requirement under subsection (2) above shall be guilty of an offence.”.

*Food hygiene information scheme*

**33 Food hygiene information scheme**

- (1) In section 16(1) of the 1990 Act, after paragraph (d) insert—
- “(da) provision for a food hygiene information scheme;”.
- (2) In Schedule 1 to the 1990 Act, after paragraph 7 insert—
- “8 (1) Provision for the following in connection with a food hygiene information scheme, namely—
- (a) for a food authority—
    - (i) to assess hygienic conditions and practices in food premises;
    - (ii) to determine food hygiene ratings for food premises (by reference to criteria specified in or determined in accordance with the regulations);
    - (iii) to give reasons for, and opportunities to comment on, food hygiene ratings;
    - (iv) to issue certificates which show food hygiene ratings;
    - (v) to inform Food Standards Scotland about food hygiene ratings;
  - (b) for notifying the public of food hygiene ratings (for example, by requiring the display of certificates, or other information, in or on food premises, requiring persons involved in a food business to provide information about food hygiene ratings when asked to do so or requiring food authorities or Food Standards Scotland to publish food hygiene ratings);
  - (c) for the review or appeal of food hygiene ratings;
  - (d) for the promotion of the scheme.
- (2) Provision for a food hygiene rating to be based on an assessment of hygienic conditions and practices carried out before the regulations come into force.”.

*Feeding stuffs*

**34 Regulation of animal feeding stuffs**

- (1) The Scottish Ministers may, for the purpose of regulating—
- (a) any animal feeding stuff, or
  - (b) anything done, or which might be done, to, or in relation to, or with a view to the production of, any animal feeding stuff,
- by order make the provision mentioned in subsection (2).
- (2) That is provision which—
- (a) applies (with or without modifications), or
  - (b) is equivalent to,
- any of the provisions of the 1990 Act (including any power to make orders or regulations or to give directions).
- (3) An order under subsection (1) may modify any enactment.
- (4) Before making an order under subsection (1), the Scottish Ministers must—
- (a) have regard to any relevant advice given to them by Food Standards Scotland, and
  - (b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the order.
- (5) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (4)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.

**PART 3**

ADMINISTRATIVE SANCTIONS

*Fixed penalty notices*

**35 Fixed penalty notices**

- (1) An authorised officer of the appropriate enforcement authority may issue to a person a fixed penalty notice in relation to a relevant offence.
- (2) In this Part, “fixed penalty notice” means a notice offering the person to whom it is issued the opportunity to discharge liability to conviction for the relevant offence in relation to which the notice is issued by paying to the appropriate enforcement authority a specified sum of money.
- (3) The sum of money is to be treated as paid only if it is paid by such method of payment as the appropriate enforcement authority determines to be acceptable.
- (4) An authorised officer may issue a fixed penalty notice to a person in relation to a relevant offence only if the officer is satisfied to the specified standard that the person has committed the offence.
- (5) A sum specified for the purposes of subsection (2) must not exceed level 4 on the standard scale.

- (6) In this section, “standard scale” has the meaning given in section 225(1) of the Criminal Procedure (Scotland) Act 1995.

### **36 Content and form of a fixed penalty notice**

- (1) A fixed penalty notice must include the following information—
- 5 (a) a statement of the grounds for issuing the notice, including a statement of—
- (i) the relevant offence that is alleged to have been committed, and
- (ii) the act or omission giving rise to the offence,
- (b) the amount of the sum that is to be paid to the appropriate enforcement authority,
- (c) the date of issue of the notice,
- 10 (d) an explanation of how payment is to be made to the appropriate enforcement authority,
- (e) the period of time within which payment is to be made,
- (f) information about any early payment discounts,
- (g) information about the person to whom, and as to how and by when, any
- 15 representations about the notice may be made,
- (h) an explanation of the effect of making payment in accordance with the notice and of the consequences of failure to make payment in accordance with the notice.
- (2) The reference in subsection (1)(e) to the period of time within which payment is to be made is a reference to such period, beginning with the date on which the notice was
- 20 issued, as may be specified.
- (3) The Scottish Ministers may by regulations make further provision about the form and content of fixed penalty notices including, in particular—
- (a) provision about the form and content of any of the information required to be included under subsection (1),
- 25 (b) provision about other information that is to be included in addition to that required under subsection (1).

### **37 Effect of a fixed penalty notice on criminal proceedings**

- (1) Where a fixed penalty notice is issued to a person in relation to a relevant offence—
- 30 (a) no criminal proceedings for the relevant offence may be brought against the person in respect of the relevant act or omission before the end of the payment period, and
- (b) if the person makes payment in accordance with the notice, the person may not at any time be convicted of the relevant offence in respect of the relevant act or omission.
- (2) In subsection (1), “the relevant act or omission” means the act or omission—
- 35 (a) constituting the relevant offence, and
- (b) by reason of which the fixed penalty notice is issued.

**38 Restrictions on issuing of a fixed penalty notice**

- (1) A fixed penalty notice may not be issued to a person in relation to a relevant offence arising out of a particular act or omission if—
- 5 (a) a fixed penalty notice has previously been issued to the person (and not withdrawn) in relation to the same relevant offence arising out of the same act or omission, or
- (b) criminal proceedings—
- 10 (i) have been brought against the person for the same relevant offence arising out of the same act or omission, or
- (ii) cannot, because of the expiry of relevant time limits for prosecution, any longer competently be brought against the person for the same relevant offence arising out of the same act or omission.
- (2) A fixed penalty notice issued in contravention of subsection (1) is of no effect (and, accordingly, the appropriate enforcement authority must repay any amount paid in respect of the notice).
- 15

**39 Withdrawal of a fixed penalty notice**

- (1) An authorised officer of the appropriate enforcement authority may withdraw a fixed penalty notice issued by an authorised officer of the authority.
- (2) A fixed penalty notice—
- 20 (a) may be withdrawn at any time before payment is made in accordance with the notice, and
- (b) is withdrawn by the issuing of a notice in writing to that effect to the person to whom the fixed penalty notice was issued.
- (3) Where a fixed penalty notice is withdrawn, it is to be treated as if it had never been issued.
- 25

**40 Income from fixed penalties to be paid to the Scottish Ministers**

- (1) Sums received by enforcement authorities in response to fixed penalty notices are to be paid over to the Scottish Ministers.
- (2) Payments by an enforcement authority under subsection (1) are to be made at such times and by such methods as the Scottish Ministers may determine.
- 30

*Compliance notices*

**41 Compliance notices**

- (1) An authorised officer of the appropriate enforcement authority may issue to a person a compliance notice in relation to a relevant offence.
- 35 (2) A “compliance notice” is a notice requiring the person to whom it is issued to take steps to ensure that the person ceases to commit a relevant offence.
- (3) An authorised officer may issue a compliance notice to a person in relation to a relevant offence only if the officer is satisfied to the specified standard that the person has committed the offence.

**42 Content and form of a compliance notice**

- (1) A compliance notice must include the following information—
- (a) a statement of the grounds for issuing the notice, including a statement of—
    - (i) the relevant offence that is alleged to have been committed, and
    - (ii) the act or omission giving rising to the offence,
  - (b) details of the steps that are required to be taken to ensure that the person to whom the notice is issued ceases to commit the relevant offence,
  - (c) the date of issue of the notice,
  - (d) the period of time within which the required steps are to be taken,
  - (e) information about the person to whom, and as to how and by when, any representations about the notice may be made,
  - (f) information about the right of appeal, including the period of time within which an appeal may be made,
  - (g) an explanation of the effect of complying with the requirements of the notice and of the consequences of failure to comply with those requirements.
- (2) The reference in subsection (1)(d) to the period of time within which the required steps are to be taken is a reference to such period, beginning with the date on which the notice was issued, as the authorised officer issuing the notice may determine.
- (3) That period must not be less than the specified period.
- (4) The Scottish Ministers may by regulations make further provision about the form and content of compliance notices including, in particular—
- (a) provision about the form and content of any of the information required to be included under subsection (1),
  - (b) provision about other information that is to be included in addition to that required under subsection (1).

**43 Failure to comply with a compliance notice**

- (1) If a person to whom a compliance notice has been issued fails to comply with the notice, the person commits an offence.
- (2) Where a person to whom a compliance notice has been issued fails to take any step required by the notice, the person does not, by reason of that failure, commit an offence under subsection (1) if—
- (a) the person takes other steps to ensure that the person ceases to commit the relevant offence in respect of which the notice was issued, and
  - (b) an authorised officer of the appropriate enforcement authority notifies the person in writing that those steps are acceptable for the purposes of complying with the notice.
- (3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**44 Effect of a compliance notice on criminal proceedings**

- (1) Where a compliance notice is issued to a person in relation to a relevant offence—
- (a) no criminal proceedings for the relevant offence may be brought against the person in respect of the relevant act or omission before the end of the compliance period, and
- (b) if the person—
- (i) complies with the requirements of the notice, or
- (ii) though failing to comply, does not, by virtue of subsection (2) of section 43, commit an offence under subsection (1) of that section in relation to the notice,
- the person may not at any time be convicted of the relevant offence in respect of the relevant act or omission.
- (2) In subsection (1), “the relevant act or omission” means the act or omission—
- (a) constituting the relevant offence, and
- (b) by reason of which the compliance notice is issued.

**45 Restrictions on issuing of a compliance notice**

- (1) A compliance notice may not be issued to a person in relation to a relevant offence arising out of a particular act or omission if—
- (a) a compliance notice has previously been issued to the person (and not withdrawn) in relation to the same relevant offence arising out of the same act or omission, or
- (b) criminal proceedings have been brought against the person for the same relevant offence arising out of the same act or omission.
- (2) A compliance notice issued in contravention of subsection (1) is of no effect.

**46 Withdrawal of a compliance notice**

- (1) An authorised officer of the appropriate enforcement authority may withdraw a compliance notice issued by an authorised officer of the authority.
- (2) A compliance notice—
- (a) may be withdrawn at any time before completion of the steps that are to be taken to comply with the requirements of the notice, and
- (b) is withdrawn by the issuing of a notice in writing to that effect to the person to whom the compliance notice was issued.
- (3) Where a compliance notice is withdrawn, it is to be treated as if it had never been issued.

**47 Appeal against a compliance notice**

- (1) A person to whom a compliance notice has been issued may, before the expiry of the relevant period, appeal to a sheriff against the decision to issue the notice.
- (2) An appeal is to be made by way of summary application.
- (3) In subsection (1), the “relevant period” means—

(a) the period of one month beginning with the date of issue of the compliance notice, or

(b) the compliance period,

whichever expires earlier.

5 (4) In an appeal under this section, the sheriff may—

(a) cancel the compliance notice, or

(b) affirm the notice, either with or without modifications.

(5) Where an appeal is made under this section, the compliance period is suspended for the period during which the appeal is pending.

10 (6) For the purposes of subsection (5), the appeal is pending until it is finally determined or is withdrawn.

### *General*

#### **48 Power to make supplementary etc. provision**

15 (1) The Scottish Ministers may by regulations make such supplementary, incidental or consequential provision as they consider appropriate in connection with fixed penalty notices and compliance notices and the carrying out by enforcement authorities and their authorised officers of functions under this Part.

(2) Regulations under this section may, in particular, include provision—

(a) facilitating, prohibiting or restricting—

20 (i) the issuing of a fixed penalty notice or compliance notice in respect of a relevant offence arising out of an act or omission in cases where another sanction has been issued or imposed in respect of the same act or omission,

25 (ii) the issuing or imposing of another sanction in respect of an act or omission in cases where a fixed penalty notice or compliance notice has been issued in respect of a relevant offence arising out of the same act or omission,

(b) for early payment discounts in relation to fixed penalty notices,

(c) applying with modifications, or making provision equivalent to, any of the following provisions of the 1990 Act—

30 (i) section 20 (offences due to fault of another person),

(ii) section 21 (defence of due diligence),

(iii) section 30(8) (documentary evidence in proceedings for offences),

(iv) section 32 (powers of entry),

(v) section 33 (obstruction etc. of officers),

(vi) section 34 (time limit for prosecutions),

35 (vii) section 36 (offences by bodies corporate),

(viii) section 36A (offences by partnerships),

(ix) section 40 (power to issue codes of practice),

(x) section 45 (regulations as to charges),

(xi) section 49(3) to (5) (authentication of documents),

(xii) section 50 (service of documents).

(3) Regulations under this section containing provision under subsection (2)(a) may also make such modifications of sections 37 and 44 as the Scottish Ministers consider necessary or expedient in connection with the provision.

5 (4) In subsection (2)(a), “another sanction” means—

(a) a fixed penalty notice (in relation to a compliance notice),

(b) a compliance notice (in relation to fixed penalty notice),

(c) an improvement notice under section 10 of the 1990 Act,

10 (d) an emergency prohibition notice or an emergency prohibition order under section 12 of the 1990 Act, and

(e) an emergency control order under section 13 of the 1990 Act.

(5) The Scottish Ministers may by regulations modify subsection (4).

#### **49 Regulations**

(1) Before making any regulations under this Part, the Scottish Ministers must—

15 (a) have regard to any relevant advice given by Food Standards Scotland, and

(b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the regulations.

20 (2) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (1)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.

(3) Subsection (1)(b) does not apply in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.

#### **50 Lord Advocate’s guidance**

25 (1) The Lord Advocate may issue, and from time to time revise, guidance to enforcement authorities about the exercise by them, and their authorised officers, of functions under this Part in relation to fixed penalty notices and compliance notices.

(2) Enforcement authorities must comply, and ensure that their authorised officers comply, with such guidance or revised guidance in exercising those functions.

#### **51 Interpretation of Part**

30 In this Part—

“appropriate enforcement authority”, in relation to a relevant offence, means the enforcement authority for the particular enactment under which the offence arises,

35 “authorised officer”, in relation to an enforcement authority, means a person (whether or not an officer of the authority) who is authorised by the authority in writing, either generally or specifically, for the purposes of this Part,

“compliance notice” has the meaning given in section 41(2),

“compliance period”, in relation to a compliance notice, means the period stated in the notice in accordance with section 42(1)(d),

“fixed penalty notice” has the meaning given in section 35(2),

“payment period”, in relation to a fixed penalty notice, means the period stated in the notice in accordance with section 36(1)(e),

“relevant offence” means a specified offence under food legislation,

“specified” means specified in regulations made by the Scottish Ministers.

## PART 4

### INTERPRETATION

#### 52 Meanings of “food” and “animal feeding stuffs”

(1) The Scottish Ministers may by order specify articles or substances, or descriptions of articles or substances, which are to be considered to be included in, or excluded from, the meaning of “food”, or the meaning of “animal feeding stuffs”, for the purposes of this Act.

(2) An order under subsection (1) may modify this Act.

#### 53 Meaning of “food matter”

In this Act, “food matter” means any matter connected with—

- (a) health which may arise in relation to the consumption of food, or
- (b) other interests of consumers in relation to food.

#### 54 Meaning of “other interests of consumers in relation to food”

In this Act, “other interests of consumers in relation to food” includes in particular interests in relation to—

- (a) the labelling, marking, presentation or advertisement of food,
- (b) the descriptions which may be applied to food.

#### 55 Meaning of “animal feeding stuffs matter”

(1) In this Act, “animal feeding stuffs matter” means any matter connected with—

- (a) animal health which may arise in connection with the consumption of animal feeding stuffs, or
- (b) other interests of users of animal feeding stuffs.

(2) “Other interests of users of animal feeding stuffs” includes in particular interests in relation to—

- (a) the labelling, marking, presentation or advertisement of animal feeding stuffs,
- (b) the descriptions which may be applied to animal feeding stuffs.

#### 56 Meaning of “food legislation”

(1) In this Act, “food legislation” means legislation for the time being in force—

- (a) relating to food, including in particular legislation relating to—

- (i) the protection of the public from risks to health which may arise in connection with the consumption of food,
  - (ii) the production, processing, importing, exporting or distribution of food,
  - (iii) the labelling, marking, presentation or advertisement of food, or
  - (iv) the descriptions which may be applied to food, or
- (b) relating to food sources or animal feeding stuffs, but only so far as the legislation relates to food matters.

- (2) In subsection (1), “legislation” means any enactment, or any obligation or restriction to which section 2(1) of the European Communities Act 1972 applies.

## **57 General interpretation**

- (1) In this Act—

“the 1990 Act” means the Food Safety Act 1990,

“the 1999 Act” means the Food Standards Act 1999,

“advertisement” includes—

- (a) any notice, circular, label, wrapper, invoice or other document,
- (b) any public announcement made orally or by any means of producing images or sound,

“article” includes a live fish which is used for human consumption while it is alive, but does not otherwise include a live animal,

“business” includes (except in “agricultural business”)—

- (a) a canteen, club, school, hospital or institution, whether carried on for profit or not,
- (b) an undertaking or activity carried on by a public body or office-holder,

“commercial operation” means—

- (a) in relation to food or contact material—
  - (i) selling, possessing for sale or offering, exposing or advertising for sale,
  - (ii) consigning, delivering or serving by way of sale,
  - (iii) preparing for sale (including packaging) or presenting, labelling or wrapping for the purpose of sale or for purposes connected with sale,
  - (iv) storing or transporting for the purpose of sale,
  - (v) importing or exporting,
- (b) in relation to a food source, deriving food from it for the purpose of sale or purposes connected with sale,

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

“enforcement authority” means an authority having functions under food legislation in relation to the enforcement of food legislation,

“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 from which food is intended to be derived (by, for example, harvesting, killing, milking or collecting eggs),

“premises” includes any place, vehicle, stall or moveable structure (and, for this purpose, “vehicle” includes any aircraft or ship, boat or other water-going vessel, other than one of a description specified by the Scottish Ministers by order),

“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,

“sale” has the extended meaning given by section 2 of the 1990 Act (and “selling” is to be construed accordingly),

“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,

“undischarged bankrupt” means a person—

(a) whose estate has been sequestrated and who has not been discharged (or against whom a bankruptcy order has been made and is still in force),

(b) who has granted a trust deed for, or made a composition or arrangement with, creditors and has not been discharged in respect of it,

(c) who is the subject of a bankruptcy restrictions order, or an interim bankruptcy restrictions order, made under the Bankruptcy (Scotland) Act 1985 or the Insolvency Act 1986,

(d) who is the subject of a bankruptcy restrictions undertaking entered into under either of those Acts,

(e) who has been adjudged bankrupt and has not been discharged, or

(f) who is subject to any other kind of arrangement or undertaking, anywhere in the world, which is analogous to those described in paragraphs (a) to (d).

(2) The reference in subsection (1) to preparing for sale is to be construed, in relation to a contact material, as a reference to manufacturing or producing for sale.

(3) Before making an order under subsection (1) (see the definition of “premises”), the Scottish Ministers must—

(a) have regard to any relevant advice given by Food Standards Scotland, and

(b) consult such persons as appear to them to be representative of interests likely to be substantially affected by the order.

(4) If it appears to the Scottish Ministers that Food Standards Scotland has consulted any person that the Scottish Ministers are required to consult under subsection (3)(b), the Scottish Ministers may treat that consultation as being effective for the purposes of that subsection as if undertaken by them.

**PART 5**

FINAL PROVISIONS

**58 Modification of enactments**

The schedule (which makes minor amendments to enactments and otherwise modifies enactments for the purposes of or in consequence of this Act) has effect.

**59 Subordinate legislation**

- (1) Each power of the Scottish Ministers to make an order or regulations under this Act includes power—
  - (a) to make different provision for different purposes,
  - (b) to make any supplementary, incidental, consequential, transitory, transitional or saving provision which they consider appropriate.
- (2) The following are subject to the affirmative procedure—
  - (a) an order under section 34(1),
  - (b) an order under section 52(1),
  - (c) an order under section 60 which adds to, replaces or omits any part of the text of this or any other Act.
- (3) All other orders and regulations under this Act are subject to the negative procedure.
- (4) Subsections (1) and (3) do not apply to an order under section 62(2).

**60 Ancillary provision**

The Scottish Ministers may by order make—

- (a) any supplementary, incidental or consequential provision which they consider appropriate for the purposes of, or in connection with, or for the purposes of giving full effect to, any provision made by, or by virtue of, this Act,
- (b) any transitional, transitory or saving provision which they consider appropriate for the purposes of, or in connection with, the coming into force of any provision of this Act.

**61 Crown application**

- (1) Nothing in this Act affects Her Majesty in Her personal capacity.
- (2) The Crown is not criminally liable in respect of any contravention of a relevant provision.
- (3) But the Court of Session may, on the application of the Lord Advocate, declare unlawful any act or omission of the Crown in contravention of a relevant provision.
- (4) Despite subsection (2), a relevant provision applies to persons in the public service of the Crown as it applies to other persons.
- (5) In this section, “relevant provision” means provision in or under this Act.

**62 Commencement**

- (1) This Part (except section 58) comes into force on the day after Royal Assent.
- (2) The rest of this Act comes into force on such day as the Scottish Ministers appoint by order.
- 5 (3) Such an order may include transitional, transitory or saving provision.

**63 Short title**

The short title of this Act is the Food (Scotland) Act 2014.

SCHEDULE  
*(introduced by section 58)*

MODIFICATION OF ENACTMENTS

*Food and Environment Protection Act 1985*

- 5 1 (1) The Food and Environment Protection Act 1985 is amended as follows.
- (2) In section 1(12) the words “or is made on their behalf by the Food Standards Agency in accordance with an arrangement made under section 17 of the Food Standards Act 1999” are repealed.
- (3) In section 2, after subsection (6) insert—
- 10 “(7) In the application of this section to Scotland, the references to the Food Standards Agency are to be ignored.”.

*Food Safety Act 1990*

- 2 (1) The 1990 Act is amended as follows.
- (2) In section 1—
- 15 (a) in subsection (1), after “178/2002” insert “(except where subsection (2A) applies)”;
- (b) after subsection (2) insert—
- “*(2A)* “Food”, for the purposes of the following provisions, is to be construed in the same way as it is for the purposes of the Food (Scotland) Act 2014—
- 20 (a) sections 15A to 15D below;
- (b) paragraph (da) of section 16(1) below;
- (c) paragraph 8 of Schedule 1 to this Act.”.
- (3) In section 33—
- (a) in subsection (2), after “with” insert “section 15C(1) above or”;
- 25 (b) in subsection (3), after “subsection (1)(b)” insert “, section 15C(1) or section 15D(2)”.
- (4) In section 34, for “section 35(2)” substitute “section 35(A1), (A2) or (2)”.
- (5) In section 35, before subsection (1) insert—
- 30 “(A1) A person guilty of an offence under section 15B(5) above shall be liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (A2) A person guilty of an offence under section 15C(2) or 15D(3) above shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.
- (6) In section 35, after subsection (1) insert—
- 35 “(1A) A person guilty of an offence under section 33(2), in so far as it relates to section 15C(1) or 15D(2), shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.
- (7) In section 53(2), after the entry for “food business” insert the following entries—

“food information	section 15A
food information law	section 15A”.

*Food Standards Act 1999*

3 (1) The 1999 Act is amended as follows.

5 (2) The following sections are repealed—  
     section 17,  
     section 27,  
     section 30.

(3) In section 43—

10 (a) in subsection (5), after “Scotland” insert “(subject to subsection (6))”,  
 (b) after subsection (5), insert—  
 “(6) Sections 17, 27 and 30 do not extend to Scotland.”.

*Water Environment and Water Services (Scotland) Act 2003*

15 4 In section 11(6)(fa) of the Water Environment and Water Services (Scotland) Act 2003,  
 for “the Food Standards Agency” substitute “Food Standards Scotland”.

*Gaelic Language (Scotland) Act 2005*

5 Section 10(3) of the Gaelic Language (Scotland) Act 2005 is repealed.



# **Food (Scotland) Bill**

[AS INTRODUCED]

An Act of the Scottish Parliament to establish Food Standards Scotland and make provision as to its functions; to amend the law in relation to food; to enable provision to be made in relation to animal feeding stuffs; to make provision for administrative sanctions in relation to offences under the law in relation to food; and for connected purposes.

Introduced by: Alex Neil  
Supported by: Michael Matheson  
On: 13 March 2014  
Bill type: Government Bill

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