

FOOD SAFETY ACT 1990

(A Selection of Relevant Provisions)

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[S. 1 - Definitions](#) - including:

'food' - includes:

- drink (includes water used as ingredient or sold in its own right)
- articles and substances of no nutritional value which are used for human consumption
- chewing gum
- ingredients used in the preparation of food

'business' - includes the undertaking of a canteen, club, school, hospital or institution (whether for profit or not) and undertakings/activities of a public or local authority

'commercial operation' -

- selling, possessing for sale and offering, exposing or advertising for sale
- consigning, delivering or serving by way of sale
- preparing for sale, or presenting, labelling or wrapping for sale
- storing or transporting for sale
- importing and exporting

'food business' - defined as any business in the course of which commercial operations with respect to food or food sources are carried out

'food premises' - any premises used for the purpose of a food business

'premises' - includes any place, vehicle, stall or moveable structure

S.2 - Extended meaning of sale

This section, in effect, brings all food, supplied in all circumstances in the course of a business, within the scope of the Act.

S.3 - Presumptions that food is intended for human consumption.

- Any food commonly used for human consumption shall, if sold or offered, exposed or kept for sale, be presumed, until the contrary is proved, to have been sold/intended for sale for human consumption.
- Any food commonly used for human consumption [found on food premises] or article or substance commonly used in food manufacture [found in food preparation, storage or selling premises] is to be presumed to be intended for sale or for manufacturing food, as appropriate.
- Likewise for articles or substances used in the composition or preparation of any food

S.6 Enforcement

Under this section, food authorities (of which Nuneaton and Bedworth Borough Council is just one) are under a legal duty to enforce and execute the Act.

S.7 Rendering food injurious to health

Any person who renders food injurious to health [by any of four means, including addition of any article or substance] with the intent that it shall be sold for human consumption is guilty of an offence.

As amended by the General Food Regulations 2004, in determining for the purposes of this section whether any food is injurious to health, regard shall be had to Article 14(4) (a) - (c) of Regulation (EC) No. 178/2002 - see definition of 'injurious to health' in the next section below.

S.8 Selling food not complying with food safety requirements (FSR)

Under this section, as amended by the General Food Regulations 2004, failure to comply with food safety requirements, as defined Article 14 of Regulation (EC) No. 178/2002, is an offence. Article 14 states that food shall be deemed to be unsafe if it is considered to be:

- (a) injurious to health; or
- (b) unfit for human consumption.

In determining whether any food is **unsafe**, regard shall be had:

- (a) to the normal conditions of use of the food by the consumer and at each stage of production, processing and distribution, and
- (b) to the information provided to the consumer, including information on the label, or other information generally available to the consumer concerning the avoidance of specific adverse health effects from a particular food or category of foods.

In determining whether any food is **injurious to health**, regard shall be had:

- (a) not only to the probable immediate and/or short-term and/or long-term effects of that food on the health of a person consuming it, but also on subsequent generations;
- (b) to the probable cumulative toxic effects;
- (c) to the particular health sensitivities of a specific category of consumers where the food is intended for that category of consumers.

In determining whether any food is **unfit for human consumption**, regard shall be had to whether the food is unacceptable for human consumption according to its intended use, for reasons of contamination, whether by extraneous matter or otherwise, or through putrefaction, deterioration or decay.

Where such food is part of a batch/lot/consignment, it is to be presumed that all the food in the batch etc. fails to comply with food safety requirements, until the contrary is proved.

S.9 - Inspection and Seizure of Suspected Food.

An authorised officer may inspect any food intended for human consumption at all reasonable times. The provisions below apply when either:

- on such an inspection, it appears to an authorised officer that the food fails to comply with food safety requirements; or
- other than on an inspection, it appears to an authorised officer that the food is likely to cause food poisoning or other disease communicable to humans

The authorised officer may either:

- (a) issue a notice to the person in charge of the food that the food or any specified portion of it
 - is not to be used for human consumption; and
 - either it is not to be removed, or may only be removed to some place specified in the noticeor,
- (b) seize the food and remove it in order to have it dealt with by a J.P.

Any contravention of the notice is an offence.

As soon as practicable, and in any event within 21 days, the officer must determine whether or not the food complies with food safety requirements. If it complies with food safety requirements, the notice must be withdrawn immediately, but if it doesn't comply with food safety requirements, the food must be seized and removed in order to be dealt with by a J.P.

Where seizure powers are used, the authorised officer must inform the person in charge of the food of his intention to have it dealt with by a J.P.

Any person liable to prosecution under S.7 or 8 above is entitled to be heard by the J.P. and to call witnesses.

If the J.P. finds that the food fails to comply with food safety requirements, he must condemn the food and order:

- (a) destruction/disposal (so as to prevent it being used for human consumption), and
- (b) that reasonable expenses incurred in connection with the destruction/disposal are to be defrayed by the owner of the food.

Compensation must be paid by the food authority if the notice is withdrawn or if the J.P. refuses to condemn the food. The amount is any depreciation in the food's value resulting from the action taken. Any dispute over this amount is settled by arbitration.

S.10 - Improvement Notices

If an authorised officer has reasonable grounds for believing that the proprietor of a food business is failing to comply with any regulations relating to the processing/treatment of food or relating to hygiene he may serve an 'improvement notice' on the proprietor. The notice must:

- state the grounds for the belief
- specify the matters concerned i.e. the breach(es) of the legislation
- specify the measures needed to be taken by the proprietor in order to comply
- require such measures (or their equivalent) to be taken by the proprietor within such period (not being less than 14 days) as may be specified in the notice.

Failure to comply with an improvement notice is an offence.

N.B. An aggrieved person can appeal to a magistrates court against an improvement notice. The notice is suspended until such time as the appeal is heard (S.39).

S.11 - Prohibition Orders

If a court

- before whom the proprietor of a food business has been convicted,
- is satisfied that the appropriate health risk condition (i.e. involves a risk of injury to health) is fulfilled with respect to that business

it must prohibit, as appropriate,

- processes or treatments
- the use of premises or equipment

If a food business proprietor or manager is convicted of an offence by a Court and the Court thinks it proper to do so, it may prohibit the proprietor or manager from participating in the management of any food business.

As soon as practicable after the making of a prohibition order, the enforcement authority must

- serve a copy of the order on the proprietor/manager, and
- affix a copy of the order in a conspicuous position on the appropriate premises

Contravention of a prohibition order is an offence.

The order ceases to have effect when the enforcement authority is satisfied that the health risk condition is no longer fulfilled:

- If satisfied the enforcement authority must issue a certificate (of their being satisfied) within 3 days of making their decision. This is subsequent to an application by the proprietor for such a certificate, which must be determined by the authority as soon as is reasonably practicable and in any event within 14 days.
- If the authority is not satisfied, it must notify the proprietor of the reasons.

An order relating to prohibiting the proprietor/manager only ceases to have effect after the giving by the court (note: not the enforcement authority) of a direction to that effect.

No application for a direction to lift a prohibition on a proprietor/manager will be considered if it is made:

- within 6 months of the making of the order, or
- within 3 months of the making of a previous application for such a direction.

S. 12 - Emergency Prohibition Notices and Orders

If an authorised officer is satisfied that a health risk condition is fulfilled and that the risk of injury is imminent, he may serve an 'emergency prohibition notice' on the proprietor, imposing the appropriate prohibition relating to premises, processes or equipment.

The officer must give the proprietor of a food business at least one day's notice of an application being made to a magistrates court for the issue of an emergency prohibition order.

The application to the magistrates court for an order must be made within 3 days of the service of the emergency prohibition notice on the proprietor. If the application is not made within this period, the notice ceases to have effect.

Contravention of an emergency prohibition notice or order is an offence.

As soon as is practicable after the service of an emergency prohibition notice, the enforcement authority must affix a copy of the notice in a conspicuous position on such part(s) of the business premises as it considers appropriate.

As soon as is practicable after the making of an emergency prohibition order, the enforcement authority must:

- serve a copy on the proprietor; and
- affix a copy in a conspicuous position on such part(s) of the business premises as it considers appropriate

An emergency prohibition notice or order ceases to have effect when the enforcement authority issues a certificate that the imminent risk to health no longer exists.

Such a certificate must be issued within three days of the enforcement authority being so satisfied.

On application by a proprietor for such a certificate the enforcement authority must determine the issue as soon as is reasonably practicable and in any event within 14 days.

If the authority is not so satisfied, it must inform the proprietor of the reasons

Unless the application for an order is made within the three day period and the court makes a subsequent emergency prohibition order, the enforcement authority must compensate the proprietor for any loss suffered in complying with the notice.

Any dispute over compensation must be settled by arbitration.

An appeal (by the proprietor) against a refusal by the enforcement authority to issue a certificate may be made to a magistrates court.

An appeal (by the enforcement authority) against the decision of a court to make an emergency prohibition order is to the Crown Court.

S. 13 - Emergency Control Orders

This section, in essence, gives the Minister powers to deal with an emergency which is too widespread or too serious for food authorities to deal with under sections 9, 10 and 11.

S.14 - Selling Food Not of the Nature or Substance or Quality Demanded

Any person who sells to the purchaser's prejudice any food which is not of the nature or substance or quality demanded by the purchaser is guilty of an offence.

This section provides a flexible and extensive means of preventing the adulteration, contamination and misdescription of food.

N.B. There is no requirement for proof of *mens rea* ('guilty mind') in this section.

S. 21 - Defence of Due Diligence

It shall be a defence for a person charged to prove that he:

- took all reasonable precautions (i.e. a system to ensure things do not go wrong), and
- exercised all due diligence (i.e. seeing that the system above works properly)

to avoid the offence being committed either by himself or by a person under his control.

A person satisfies the requirements of this defence if it can be proven that:

- the offence was due to the act or default of another person who was not under his control, or to reliance on information supplied by such a person.
- all reasonable checks were carried out by him, or it was reasonable to rely on checks carried out by the person who supplied the food
- he did not know and had no reason to suspect at the time of the alleged offence that his act or omission would amount to an offence

NB There must be proof that all reasonable precautions were taken and that all due diligence had been exercised.

Some principles of due diligence are:

- although it must be under the directing will of the Company, responsibility can be delegated
- the precautions and checks to be taken depend on:
 - the size and resources of the company
 - the risk imposed by the products
 - all other relevant circumstances
- reliance cannot be placed on warranties or on general assurances from suppliers (but there are exempting provisions for those who have not prepared or imported the food). However, the acquisition of warranties etc. can be part of a due diligence system
- the system must be in writing with
 - adequate instructions and training for staff
 - records kept of the checks made
- any reasonable precautions which can be taken must be taken
- the system must be pro-active and reactive
- complaints by consumers should be recorded and analysed
- organisational responsibilities at all levels must be specified and acknowledged
- the system must be modified, adjusted or amended as required

- use could be made of internal and external codes of practice, but these are not sufficient in themselves
- operation of the system must be checked and results recorded
- it must cover (amongst others things):
 - hygiene and safety of premises and equipment
 - quality, composition and safety of food products
 - staff training

N.B. It is ultimately for the Court to decide if the defendant satisfies the requirements of a due diligence defence (not the enforcement authority or the company)

S. 29 - Procurement of Samples

An authorised officer may

- purchase a sample of food or substance used in food preparation
- take a sample of food or any such substance
- take a sample from any food source or contact material
- take a sample of any article or substance that may be required as evidence in legal proceedings

S. 32 - Powers of Entry

An authorised officer has a right (on production, if so required, of a duly authenticated document showing his authority) at all reasonable hours -

- to enter any premises in the authority's area to ascertain compliance with relevant food law (i.e. general inspection power; allows inspection of premises, processes systems, equipment etc.)
- to enter any business premises (whether in the authority's area or not) to ascertain if there is any evidence of contraventions of relevant food law (i.e. an investigation power - relating to a contravention which is believed to have already occurred)
- to enter any premises in order to perform the authority's functions under the Food Safety Act 1990

N.B. At least 24 hours notice must be given to the occupier for admission as of right to a private dwelling-house.

A J.P. may issue a warrant authorising the authorised officer to enter premises if need be by reasonable force where:

- admission has been refused or is anticipated, and that notice of the intention to apply for a warrant has been given to the occupier; or
- applying for admission or giving such notice would defeat the object of the entry or the case is urgent, or the premises are unoccupied, or the occupier is temporarily absent.

The warrant remains in force for one month.

An authorised officer entering premises under this section (with warrant or not) may take with him other necessary persons; unoccupied premises entered under a warrant must be left as secured against unauthorised access as he found them.

An authorised officer entering premises under this section (with warrant or not) may also inspect any records (including computerised records) relating to a food business.

An authorised officer entering premises under this section (with warrant or not) may seize and detain any records required as evidence or require computerised records to be produced in a form in which they may be taken away.

An authorised officer is prohibited from disclosing any trade secret.

S. 33 - Obstruction etc. of Officers

Intentional obstruction of an officer in the course of his duties or failure to give reasonable assistance or information is an offence.

Providing false or misleading information is an offence.

No person can be required to answer questions or provide information if to do so might incriminate them.

S.34 - Time limits for prosecutions

Whichever is the earlier between:

- three years from the commission of the offence, or
- one year from its discovery by the prosecutor

S 35 - Punishment

On summary conviction (magistrates' court) penalties are as follows:

obstruction etc. (under S.33(1)) - a fine not exceeding level 5, or imprisonment (not exceeding 3 months), or both

offences under S.7 (rendering food injurious to health), **S.8** (selling food not complying with food safety requirements) or **S.14** (selling food not of the nature or substance or quality demanded) -

- fine not exceeding £20,000; or
- imprisonment (not exceeding 6 months), or
- both

for **any other offence** - a fine not exceeding the statutory maximum (£20,000), or imprisonment (not exceeding 6 months), or both.

On indictment (in the Crown Court) the available penalties are a fine (unlimited), or imprisonment (not exceeding 2 years), or both.

S. 37 - Appeal to a magistrates' court

This section permits appeal to a magistrates' court against

- a decision to serve an improvement notice
- a decision to refuse to issue a certificate removing a prohibition order or emergency prohibition order
- a decision to refuse/cancel/suspend/ revoke a licence required by regulations under the Act.

Appeals must be brought within one month from the date of the service of the notice of the decision, or for appeals against improvement notices, the period specified in the notice or one month, whichever ends the earlier.

S.38 - Appeals to a Crown Court

This includes:

- appeals against dismissal by magistrates' court
- appeals against magistrates' court decision to make a prohibition order or emergency prohibition order

S.39 - Appeals against improvement notices

The magistrates' court may cancel, affirm or amend the notice. An appeal effectively suspends the notice until the appeal is heard.