STATUTORY INSTRUMENTS

1989 No. 846 (N.I. 6)

NORTHERN IRELAND

The Food (Northern Ireland) Order 1989

Made - - - -	*16th May 1989*
Coming into Operation	*17th August 1989*

At the Court at Buckingham Palace, the 16th day of May 1989
Present,
The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974(**1**) andof all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Food (Northern Ireland) Order 1989.

(2) This Order shall come into operation on the expiration of three months from the day on which it is made.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**2**) shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

(**1**) 1974 c. 28
(**2**) 1954 c. 33 (N.I.)

"advertisement" includes any notice, circular, label, wrapper, invoice or other document, and any public announcement made orally or by any means of producing or transmitting light or sound;

"analysis" includes micro-biological assay but no other form of biological assay;

"animal" does not include bird or fish;

"article" does not include a live animal or bird;

"authorised officer" has the meaning assigned to that expression by Article 35;

"business" includes the undertaking of a canteen, club, school, hospital or institution, whether carried on for profit or not, and any undertaking or activity carried on by a district council or other public authority;

"container" includes any basket, pail, tray, package or receptacle of any kind, whether open or closed;

"cream" means that part of milk rich in fat which has been separated by skimming or otherwise;

"the Department" means the Department of Health and Social Services;

"drug" includes medicine for internal or external use;

"food" includes drink, chewing gum, and other products of a like nature and use, and articles and substances used as ingredients in the preparation of food or drink or all such products, but does not include—

(a) water, live animals or birds;

(b) fodder or feeding stuffs for animals, birds or fish; or

(c) articles or substances used only as drugs;

"food business" means any business for the purposes of which food intended for sale, or sold, for human consumption, is prepared, transported, stored, packaged, wrapped, exposed for sale, served or delivered;

"human consumption" includes use in the preparation of food for human consumption;

"ice-cream" includes any similar commodity;

"knackery" has the meaning assigned to that expression by Article 14(2);

"milk" includes cream and separated milk, but does not include dried milk or condensed milk;

"officer" includes servant;

"premises" means a building or part of a building, and any forecourt, yard or place of storage used in connection with a building or part of a building;

"preparation", in relation to food, includes manufacture and any form of treatment, and "preparation for sale" includes packaging;

"prescribed" means prescribed by regulations made by the Department;

"public analyst" has the meaning assigned to that expression by Article 36;

"purveyor", in relation to milk, includes any person who sells milk, whether wholesale or by retail;

"sampling officer" has the meaning assigned to that expression by Article 38;

"sanitary convenience" means a closet, privy or urinal;

"separated", in relation to milk, includes skimmed;

"statutory provision" has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954(**3**);

(**3**) 1954 c. 33 (N.I.)

"substance" includes a liquid.

(3) For the purposes of this Order, other than Articles 16, 18 and 19(1)(b),—

(a) the supply of food for human consumption, otherwise than by sale, at, in or from any place where food is supplied in the course of a business, shall be deemed to be a sale of that food, and references to purchasers shall be construed accordingly;

(b) where in connection with any business in the course of which food is supplied the place where the food is served is different from the place where the food is consumed, both those places shall be deemed to be places in which food is sold.

(4) For the purposes of section 42(2) of the Northern Ireland Constitution Act 1973(**4**) (validity of Acts of the Parliament of Northern Ireland), provisions of this Order which re-enact provisions of an Act of the Parliament of Northern Ireland shall be deemed to be provisions of such an Act.

(5) Provisions of this Order which re-enact provisions of orders made under any statutory provision shall have no greater effect by virtue of their re-enactment.

PART II

GENERAL PROVISIONS AS TO FOOD

Composition and labelling of food

Offences as to preparation and sale of injurious foods

3.—(1) A person who—

(a) adds any substance to food,

(b) uses any substance as an ingredient in the preparation of food,

(c) abstracts any constituent from food, or

(d) subjects food to any other process or treatment,

so as (in any such case) to render the food injurious to health, with intent that the food shall be sold for human consumption in that state, shall be guilty of an offence.

(2) A person who—

(a) sells for human consumption, or

(b) offers, exposes or advertises for sale for human consumption or has in his possession for the purpose of sale for human consumption,

any food rendered injurious to health by means of any operation described in paragraph (1) shall, subject to paragraphs (3) and (4), be guilty of an offence.

(3) In any prosecution under this Article for an offence consisting of the advertisement for sale of any food, it shall be a defence for the person charged to prove that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement for publication in the ordinary course of business, and did not himself make, or cause to be made, any material alteration in the substance of that advertisement.

(4) In determining for the purposes of this Order whether an article of food is injurious to health, regard shall be had not only to the probable effect of that article on the health of a person consuming it, but also to the probable cumulative effect of articles of substantially the same composition on the health of a person consuming such articles in ordinary quantities.

(**4**) 1973 c. 36

General protection for purchasers of food

4.—(1) A person who sells to the prejudice of the purchaser any food which is not—

(a) of the nature, or

(b) of the substance, or

(c) of the quality,

of the food demanded by the purchaser, shall, subject to Article 5, be guilty of an offence.

(2) In paragraph (1) the reference to sale shall be construed as a reference to sale for human consumption; and in any prosecution under that paragraph it shall not be a defence to allege that the purchaser was not prejudiced because he bought for analysis or examination.

Defences available in proceedings under Article 4

5.—(1) In any prosecution under Article 4 for an offence consisting of the sale of food—

(a) to which any substance has been added, or

(b) in the preparation of which any substance has been used as an ingredient, or

(c) from which any constituent has been abstracted, or

(d) which has been subjected to any other process or treatment,

other than food thereby rendered injurious to health, it shall be a defence to prove—

(i) that the operation in question was not carried out fraudulently; and

(ii) that the article was sold with a notice attached to it of adequate size, distinctly and legibly printed and conspicuously visible, stating explicitly the nature of the operation, or was sold in a wrapper or container displaying such a notice.

(2) In any prosecution under Article 4 for an offence alleged to have been committed by the sale of an article containing extraneous matter, it shall be a defence for the person charged to prove that the presence of that matter was an unavoidable consequence of the process of collection or preparation.

(3) In any prosecution under Article 4 for an offence alleged to have been committed by the sale of diluted spirit, being whisky, brandy, rum or gin, it shall be a defence for the person charged to prove—

(a) that the spirit in question was diluted with water only; and

(b) that its alcoholic strength by volume was not lower than 37.2 per cent.

Regulations as to composition of food, etc.

6.—(1) Subject to paragraph (4), the Department may, so far as it appears to the Department to be necessary or expedient in the interests of the public health or otherwise for the protection of the public or to be called for by any Community obligation, make regulations for any of the following purposes—

(a) for requiring, prohibiting or regulating the addition of any specified substance, or any substance of any specified class, to food intended for sale for human consumption or any class of such food, or the use of any such substance as an ingredient in the preparation of such food, and generally for regulating the composition of such food;

(b) for requiring, prohibiting or regulating the use of any process or treatment in the preparation of any food intended for sale for human consumption, or any class of such food;

(c) for prohibiting or regulating the sale, possession for sale, offer or exposure for sale, consignment or delivery of food which does not comply with any of the regulations, or

in relation to which an offence under the regulations has been committed or would have been committed if any relevant act or omission had taken place in Northern Ireland;

(d) for prohibiting or regulating the sale, possession for sale, or offer, exposure or advertisement for sale, of any specified substance, or of any substance of any specified class, with a view to its use in the preparation of food for human consumption, and the possession of any such substance for use in the preparation of food intended for sale for human consumption.

(2) In the exercise of the functions conferred by this Article the Department shall have regard to the desirability of restricting, so far as practicable, the use of substances of no nutritional value as foods or as ingredients of foods.

(3) Regulations made under this Article may apply to cream and separated milk, and to any food containing milk, but otherwise shall not apply to milk.

(4) Regulations under this Article which apply to cream or ice-cream shall be made by the Department with the concurrence of the Department of Agriculture.

(5) Regulations made under this Article may provide that, where any food is certified by a public analyst as being food to which the regulations apply so far as they are made under paragraph (1)(c), that food may be treated for the purposes of Article 11 as being unfit for human consumption.

(6) Nothing in any regulations made under this Article shall be taken as prejudicing the generality of the powers conferred by Article 11.

Power of Department to obtain particulars of ingredients

7.—(1) For the purpose of enabling the Department to exercise the functions conferred by Article 6, the Department may by order require every person who, at the date of the order or at any subsequent time, carries on a business which includes the production or use of substances of any class specified in the order to furnish to the Department, within such time as may be so specified, such particulars as may be so specified of the composition and use of any such substance sold in the course of that business for use in the preparation of food for human consumption or used for that purpose in the course of that business.

(2) Without prejudice to the generality of paragraph (1), an order made under that paragraph may require the following particulars to be furnished in respect of any substance—

(a) particulars of the composition and chemical formula of the substance;

(b) particulars of the manner in which the substance is used or proposed to be used in the preparation of food;

(c) particulars of any investigations or inquiries carried out by or to the knowledge of the person carrying on the business in question, for the purpose of determining whether and to what extent the substance, or any product formed when the substance is used as mentioned above, is injurious to, or in any other way affects, health;

(d) particulars of any investigations or inquiries carried out by or to the knowledge of the person carrying on the business in question for the purpose of determining the cumulative effect on the health of a person consuming such substance in ordinary quantities.

(3) Particulars furnished in accordance with an order under this Article, or information relating to any individual business obtained by means of such particulars, shall not, without the previous consent in writing of the person carrying on the business in question, be disclosed except—

(a) in accordance with directions of the Department, so far as may be necessary for the purposes of Article 6 or of any corresponding enactment for the time being in force in England and Wales or Scotland; or