

# FOOD SAFETY ORDINANCE, 2016

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## ST HELENA

### A BILL

### FOR

### AN ORDINANCE

**to make new provision for the regulation of the production, trade and handling of food to promote food safety and to introduce standards of hygiene in the food business; and for purposes connected therewith or incidental thereto.**

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Enacted by the Governor of St Helena with the advice and consent of the Legislative Council of St Helena.

#### PART 1 PRELIMINARY AND INTERPRETATION

##### **Citation and commencement**

1. This Ordinance may be cited as the Food Safety Ordinance, 2016, and shall come into force on 1<sup>st</sup> January 2017.

##### **Interpretation**

2. In this Ordinance, unless the context otherwise requires,—

“**authorised officer**” means any person who is authorised in writing, either generally or specifically, under section 6;

“**bakehouse**” means any premises where bread, confectionery, biscuits or any other baked product are produced for sale;

“**building**” includes any hotel, school, factory, movable van or other building where persons are employed and also includes the curtilage of such building within the business;

“**business**” includes the undertaking of a canteen, club, school, hospital or institution, whether carried on for profit or not;

“**commercial operation**” in relation to any food or contact material, means any of the following:

- (a) selling, possessing for sale and offering, exposing or advertising for sale;
- (b) consigning, delivering or serving by way of sale;
- (c) preparing for sale or presenting, labelling or wrapping for the purpose of sale;
- (d) storing or transporting for the purpose of sale;
- (e) importing and exporting;

and, in relation to any food source, means deriving food from it for the purpose of sale or for purposes connected with sale;

**“contact material”** means any equipment and packaging or other material that comes in contact with food and includes surfaces where food is prepared;

**“equipment”** includes any apparatus, furnishings and utensils used for the storage, preparation and distribution of food and drink;

**“feed”** includes, but is not limited to, any substance or product, including additives, whether processed, partially processed or unprocessed, intended to be used for oral feeding to animals;

**“food”** includes any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans;

**“Food Authority”** means the Food Authority referred to in section 6;

**“food business”** means any trade or business, whether for profit or not, both public and private, in the course of which any operation with respect to the production, processing, handling or distribution of food are carried out;

**“food business operator”** means the natural or legal persons responsible for ensuring that the requirements of laws relating to food safety are met within the food business under their control, including managers and employees and those with a financial interest in such business;

**“food premises”** means any premises used as a food business, including bakehouses, slaughterhouses and private dwellings used to prepare food for sale;

**“food source”** means any growing crop or live animal, bird or fish from which food is intended to be derived (whether by harvesting, slaughtering, milking, collecting eggs or otherwise);

**“occupier”** means the person in occupation or having the charge, management or control of a building or part of a building, either on his own account or as the agent of another person; and in the case of a ship or aircraft, means the master or other person in charge thereof;

**“official control”** means any form of control that the Food Authority performs for the verification of compliance with laws relating to food safety;

**“placing on the market”** means the holding of food or feed for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves;

**“premises”** includes any land, building, vehicle, stall or any structure, whether moveable or fixed, any aircraft or ship, and any streams, drains, ditches or places, whether open, covered or enclosed, whether built on or not, both natural and artificial;

**“processing”** means any action that substantially alters the initial product, including heating, smoking, curing, maturing, drying, marinating, extraction, extrusion or a combination of those processes;

**“Regulatory Authority”** means the Regulatory Authority referred to in section 5;

**“preparation”** in relation to food, includes manufacture and any form of processing or treatment, and **“preparation for sale”** includes packaging;

**“stall”** includes any stand, marquee, tent, caravan or mobile canteen;

**“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;

**“treatment”** in relation to any food includes subjecting it to heat or cold.

### **Meaning of sale**

3. (1) The supply of food 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 the sale of that food and references to purchasing and purchasers shall be construed accordingly.

- (2) This Ordinance shall apply—
- (a) in relation to any food which is offered as a prize or reward or given away in connection with any entertainment to which the public are admitted, whether on payment of money or not, as if the food were, or had been, exposed for sale by each person concerned in the organisation of the entertainment;
  - (b) in relation to any food which, for the purpose of advertisement or in furtherance of any trade or business, is offered as a prize or reward or given away, as if the food were, or had been, exposed for sale by the person offering or giving away the food; and
  - (c) in relation to any food which is exposed or deposited in any premises for the purpose of being so offered or given away as mentioned in paragraph (a) or (b), as if the food were, or had been, exposed for sale by the occupier of the premises;
- (3) For the purposes of subsection (2), “entertainment” includes any social gathering, amusement, exhibition, performance, game, sport or trial of skill.

### **Presumption that food is intended for human consumption**

4. (1) 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 or, as the case may be, to have been or to be intended for sale for human consumption.

(2) The following shall be presumed, until the contrary is proved, to be intended for sale, or for manufacturing food for sale, for human consumption:

- (a) Any food commonly used for human consumption which is found on premises used for the preparation, storage, or sale of that food; and
- (b) any article or substance commonly used in the manufacture of food for human consumption which is found on premises used for the preparation, storage or sale of that food.

(3) Any article or substance capable of being used in the composition or preparation of any food commonly used for human consumption which is found on premises on which that food is prepared shall, until the contrary is proved, be presumed to be intended for such use.

## PART 2 IMPLEMENTATION

### **Regulatory Authority**

5. (1) The Health Protection Board established by section 3 of the Public Health Ordinance, Cap. 49, shall be the Regulatory Authority for the purposes of this Ordinance.

(2) The Regulatory Authority shall enforce and execute the provisions of this Ordinance and such other functions as the Governor may consider appropriate in relation to the operation thereof.

(3) The Regulatory Authority may institute proceedings under any provisions of this Ordinance.

(4) The Regulatory Authority may, where necessary, assign its functions and delegate its powers under this Ordinance to an Authority of another country which has functions and powers similar to those of the Regulatory Authority.

(5) The Regulatory Authority may issue Codes of recommended practice for the guidance of the Food Authority as regards the execution and enforcement of this Ordinance and of Regulations and Orders made under it.

(6) The Regulatory Authority may direct the Food Authority to take specified steps in order to comply with a Code issued under subsection (5).

## **Food Authority and authorised officers**

6. (1) In this Ordinance, the “Food Authority” in relation to the provisions of this Ordinance, shall be the authority with responsibility for the delivery of official controls and consists of the Director of Health, the Senior Medical Officer and the Senior Environmental Health Officer.

(2) The Food Authority shall carry out official controls to verify the food business operator’s compliance with the requirements of this Ordinance.

(3) The Governor may appoint and authorise such officers as may be necessary for the delivery of official controls according to the requirements of this Ordinance.

(4) An authorised officer is not personally liable in respect of any act done by that officer within the scope of his employment and in the execution or purported execution of this Ordinance, if that act was done in the honest belief that the officer’s duty under this Ordinance required or entitled the officer to do it.

(5) Nothing in subsection (4) is to be construed as relieving the Food Authority of any liability in respect of the acts of their officers.

(6) Where an action has been brought against an officer of the Food Authority in respect of an act done by that officer in the execution or purported execution of this Ordinance, but outside the scope of the officer’s employment, the Food Authority may indemnify that officer against the whole or a part of any damages which the officer has been ordered to pay or any costs which the officer may have incurred if the Food Authority is satisfied that the officer honestly believed that the act complained of was within the scope of the officer’s employment.

(7) Any expenses which are incurred under this Ordinance by an authorised officer in procuring samples, and causing samples to be analysed or examined, shall be defrayed by the Food Authority.

## **Power to make Regulations**

7. (1) The Governor in Council may make regulations generally for carrying into effect the provisions of this Ordinance.

(2) Without prejudice to the generality of subsection (1), regulations may provide for forms to be used, fees to be paid, and procedures to be adopted for or in connection with the operation of this Ordinance, including but not limited to—

- (a) provisions regulating the food industry to secure food safety and ensure that food is fit for human consumption;
- (b) labelling, marking or advertising of food or food related items;
- (c) registration and licensing of food premises;
- (d) qualification requirements for appointment of authorised persons under section 6;
- (e) for official controls to be exercised by the Food Authority and authorised officers and
- (f) the amount of any fixed penalties which may be imposed under section 16.

## **PART 3 OFFENCES**

### **Food not complying with food safety requirements**

8. (1) Food shall not be placed on the market if it is unsafe.

(2) Food shall be deemed to be unsafe if it is considered to be—

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

(3) 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.
- (4)** In determining whether any food is injurious to health, regard shall be had—
- (a) not only to the probable immediate, short-term 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.
- (5)** 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—
- (a) contamination, whether by extraneous matter or otherwise; or
  - (b) through putrefaction, deterioration or decay.
- (6)** Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment there is no evidence that the rest of the batch, lot or consignment is unsafe.
- (7)** Conformity of a food with specific provisions applicable to that food shall not bar the competent authorities from taking appropriate measures to impose restrictions on it being placed on the market or to require its withdrawal from the market where there are reasons to suspect that, despite such conformity, the food is unsafe.
- (8)** Any person who places on the market food which is found to be unsafe is guilty of an offence.

### **Rendering food injurious to health**

- 9. (1)** Any person who renders any food injurious to health by—
- (a) adding any article or substance to the food;
  - (b) using any article or substance as an ingredient in the preparation of the food;
  - (c) abstracting any constituent from the food; or
  - (d) subjecting the food to any other process or treatment,
- with intent that it shall be sold for human consumption, is guilty of an offence.

### **Consumer protection**

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

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

## **PART 4 DEFENCES**

### **Offences due to fault of another person**

**11.** Where the commission by person A of an offence under this Ordinance is due to the act or default of person B, then person B commits the offence; and person B may be convicted of the offence by virtue of this section whether or not proceedings are taken against

person A.

## **Defence of due diligence**

**12. (1)** In any proceedings for an offence under this Ordinance or any Regulations, it shall, subject to subsection (5), be a defence to prove that the person accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by him or by a person under his control.

**(2)** Without prejudice to the generality of subsection (1), a person accused of an offence of contravening section 8 who —

(a) did not prepare the food in respect of which the offence is alleged to have been committed; or

(b) did not import it into St Helena,

shall be taken to have established the defence provided by subsection (1) if the requirements of subsections (3) or (4) are satisfied.

**(3)** The requirements of this subsection are satisfied if it is proved that—

(a) the commission of the offence was due to the act or default of some other person who was not under the control of the person accused, or to reliance on information supplied by such other person;

(b) either—

(i) the person accused carried out all such checks of the food in question as were reasonable in all the circumstances; or

(ii) it was reasonable in all the circumstances for the person accused to rely on checks carried out by the person who supplied the person accused with that food; and

(c) the person accused did not know and had no reason to suspect at the time the offence was committed that the act or omission would amount to an offence under this Ordinance.

**(4)** The requirements of this section are satisfied if the offence is one of placing on the market and it is proved that—

(a) the commission of the offence was due to the act or default of some other person who was not under the control of the person accused, or due to reliance on information supplied by such other person;

(b) the placing on the market of which the offence consisted was not a placing on the market under the name or mark of the person accused; and

(c) the person accused did not know and could not reasonably be expected to know at the time the offence was committed that the act or omission would amount to an offence under this Ordinance.

**(5)** If in any case the defence provided by subsection (1) involves the allegation that the commission of the offence was due to the act or default of another person, or to reliance on information supplied by another person, the person accused shall not, without leave of the court, be entitled to rely on that defence, unless—

(a) at least seven clear days before the hearing; and

(b) where he previously appeared before the court in connection with the alleged offence, within one month of the first such appearance,

he has served on the prosecutor a written notice giving such information identifying or assisting in the identification of that other person as was then in his possession.

## **PART 5 ENFORCEMENT**

### **Powers of entry**



**13. (1)** An authorised officer, on producing some duly authenticated document showing authorisation, if so required, has a right to enter any premises at all reasonable hours for the purpose of—

- (a) ascertaining whether there is or has been any contravention of the provisions of this Ordinance on the premises;
- (b) ascertaining whether there is any evidence on the premises of any such contravention; and
- (c) performing any of his functions under this Ordinance,

but admission to any premises used only as a private dwelling-house may not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

**(2)** If a Justice of the Peace, on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any such purpose as is mentioned in subsection (1) and that either—

- (a) admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the Justice of the Peace may by warrant signed by him or her authorise the authorised officer to enter the premises, if need be by reasonable force.

**(3)** Every warrant granted under this section shall continue in force for a period of one month.

**(4)** An authorised officer entering any premises by virtue of this section, or of a warrant issued under it, may be accompanied by such other persons as the officer considers necessary, and on leaving any unoccupied premises which the officer has entered by virtue of such a warrant must leave them as effectively secured against unauthorised entry as the officer found them.

**(5)** An authorised officer entering premises by virtue of this section, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are stored in any electronic form—

- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and
- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance as the officer may reasonably require.

**(6)** Any officer exercising any power conferred by subsection (5) may—

- (a) seize and detain any records which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of this Ordinance; and
- (b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

**(7)** Any person who enters any premises by virtue of this section, or of a warrant issued under it, shall not disclose to any other person any information obtained on the premises with regard to any trade secret, unless the disclosure was made in the performance of their duty and any person who fails to comply with this subsection is guilty of an offence.

### **Hygiene improvement notices**

**14. (1)** If an authorised officer has reasonable grounds for believing that a food business operator is failing to comply with any regulations referred to in subsection (3), he

may, by a notice (hereinafter referred to as a “hygiene improvement notice”) served on that operator—

- (a) state the officer's grounds for believing that the operator is failing to comply with the regulations;
  - (b) specify the matters which constitute the operator's failure so to comply;
  - (c) specify the measures which, in the officer's opinion, the operator must take in order to secure compliance; and
  - (d) require the operator to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.
- (2) Any person who fails to comply with an improvement notice shall be guilty of an offence.
- (3) This section and section 15 apply to any regulations made under section 7 which—
- (a) requires, prohibits or regulates the use of any process or treatment in the preparation of food; or
  - (b) makes provision for securing the observance of hygienic conditions and practices in connection with the carrying out of commercial operations with respect to food or food sources.

### **Remedial action notices**

- 15. (1)** Where it appears to an authorised officer that in a food premises—
- (a) any of the requirements of any regulations referred to in section 14(3) are being breached; or
  - (b) an inspection under the Ordinance is being hampered,
- the officer may, by a notice in writing (hereinafter referred to as a “remedial action notice”) served on the relevant food business operator or a duly authorised representative—
- (a) prohibit the use of any equipment or any part of the establishment specified in the notice;
  - (b) impose conditions upon or prohibit the carrying out of any process; or
  - (c) require the rate of operation to be reduced to such extent as is specified in the notice, or to be stopped completely.
- (2) A remedial action notice must be served as soon as practicable and must state why it is being served.
- (3) A remedial action notice served under subsection (1)(a) must specify the breach and the action needed to remedy it.
- (4) An authorised officer who has served a remedial action notice on a food business operator must, as soon as he is satisfied that such action has been taken, withdraw the notice by a further notice in writing served on the food business operator or a duly authorised representative.
- (5) Any person who fails to comply with a remedial action notice commits an offence.

### **Fixed monetary penalty notices**

- 16. (1)** This section applies to such offences under the Ordinance as may be prescribed by Regulations.
- (2) An authorised officer who has reasonable grounds to believe that the food business operator has committed an offence to which this section applies, may give such operator a penalty notice in respect of the offence (hereinafter referred to as a “penalty notice”).
- (3) A penalty notice is a notice offering the food business operator the opportunity to discharge any liability to conviction for the offence to which the notice relates by paying a penalty in accordance with this Ordinance.

- (4) A penalty notice must—
- (a) state the alleged offence;
  - (b) give such particulars of the circumstances alleged to constitute such offence as are necessary for giving reasonable information about it;
  - (c) the amount of the prescribed penalty and the period for payment referred to in subsection (6);
  - (d) the consequences of not paying the penalty before the end of the period mentioned in paragraph (c);
  - (e) the person to whom and the address at which payment may be made;
  - (f) by what method payment may be made;
  - (g) the person to whom and the address at which any representations relating to the notice may be made.
- (5) A penalty notice must also—
- (a) inform the person to whom it is given of his right to be tried for the alleged offence; and
  - (b) explain how that right may be exercised.
- (6) The penalty shall be paid within the period of 29 days from the day on which the notice is given.
- (7) Proceedings for the offence in respect of which a penalty notice was given may not be brought before the end of the period for payment of the penalty.
- (8) Subsection (7) does not apply if the person to whom the notice was given has asked in accordance with subsections (12) and (13) to be tried for the alleged offence.
- (9) If the penalty is paid in accordance with the penalty notice before the end of the period mentioned in subsection (6), no proceedings for the offence may be brought, and subsection (11) does not apply.
- (10) If proceedings have been brought pursuant to a request under subsection (12), but then the penalty is paid as mentioned in subsection (9), those proceedings may not be continued.
- (11) In any proceedings, a certificate is evidence of the facts which it states, if—
- (a) it purports to be signed by or on behalf of the person responsible for the financial affairs of the Food Authority; and
  - (b) it states that payment of the penalty in pursuance of the notice was or was not received by a date specified in the certificate.
- (12) If the person to whom a penalty notice has been given asks to be tried for the alleged offence, the authorised officer shall communicate this to the Attorney General who may institute proceedings against him.
- (13) Any request to be tried must be made—
- (a) by notice given to the Food Authority before the end of the period for payment of the penalty; and
  - (b) in the manner specified in the penalty notice.
- (14) Where the Food Authority considers that a penalty notice which an authorised officer acting on its behalf has given to a food business operator ought not to have been given, the Regulatory Authority may give notice to such operator withdrawing the penalty notice, in which case—
- (a) it must repay any amount which has been paid by way of penalty in pursuance of the penalty notice; and
  - (b) no proceedings may be brought or continued against such operator for the offence in question.

## **Prohibition orders**

17. (1) If—

(a) a food business operator is convicted of an offence under this Ordinance; and  
(b) the court by or before which he is so convicted is satisfied that the health risk condition referred to in subsection (2) is fulfilled with respect to that business,  
the court may make an order imposing the appropriate prohibition, as referred to in subsection (3).

(2) The health risk condition is fulfilled with respect to any food business if any of the following involves risk of injury to health:

- (a) the use for the purposes of the business of any process or treatment;
- (b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; and
- (c) the state or condition of any premises or equipment used for the purposes of the business.

(3) The appropriate prohibition is—

- (a) in a case falling within subsection (2)(a), a prohibition on the use of the process or treatment for the purposes of the business;
- (b) in a case falling within subsection (2)(b), a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description;
- (c) in a case falling within subsection (2)(c), a prohibition on the use of the premises or equipment for the purposes of any food business.

(4) If—

- (a) the food business operator is convicted of an offence under this Ordinance or any of the Regulations made under it; and
- (b) the court by or before which he is so convicted thinks it proper to do so in all the circumstances of the case,

the court may, by an order, impose a prohibition on such operator participating in the management of any food business, or any food business of a class or description specified in the order.

(5) As soon as practicable after the making of an order under subsection (1) or (4) (hereinafter referred to as a “prohibition order”), the Food Authority shall—

- (a) serve a copy of the order on the food business operator; and
- (b) in the case of an order under subsection (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the business as they consider appropriate,

and any person who knowingly contravenes such an order shall be guilty of an offence.

(6) A prohibition order shall cease to have effect—

- (a) in the case of an order under subsection (1), on the issue by the Food Authority of a certificate to the effect that the Food Authority is satisfied that the food business operator has taken sufficient measures to eliminate the health risk condition;
- (b) in the case of an order under subsection (4), on the giving by the court of a direction to that effect.

(7) Upon the food business operator notifying the Food Authority that a health risk condition is no longer in existence, the Food Authority shall cause an authorised officer to carry out an inspection of the said operator and—

- (a) if the Food Authority is satisfied that the risk condition is no longer in existence, it shall, within three days of the inspection by the authorised officer, issue a certificate under subsection (6)(a); or
- (b) if the Food Authority is not satisfied that the health risk condition has been eliminated, it shall give notice to the food business operator of the reasons for that determination.

(8) The court shall give a direction under subsection (6)(b) if, on an application by the food business operator, the court thinks it proper to do so having regard to all the

circumstances of the case, including in particular the conduct of the food business operator since the making of the order; but no such application shall be entertained if it is made—

- (a) within six months after the making of the prohibition order; or
- (b) within three months after the making by the proprietor of a previous application for such a direction.

### **Inspection and seizure of food**

**18. (1)** An authorised officer of the Food Authority may at all reasonable times inspect any food intended for human consumption which—

- (a) has been sold or is offered or exposed for sale; or
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale; or
- (c) is otherwise placed on the market,

and subsections (3) to (9) shall apply where, on such an inspection, it appears to the authorised officer that any food fails to comply with food safety requirements.

**(2)** On an inspection of any food, an authorised officer of the Food Authority may certify that such food has not been produced, processed or distributed in compliance with any Regulations made under section 7 and where any food has been so certified it shall be treated for the purposes of this section as failing to comply with food safety requirements:

Provided that where such food forms part of a batch, lot or consignment of food of the same class or description, all the food in the batch, lot or consignment shall, until it is proved that it has been produced, processed or distributed in compliance with the relevant Regulations, be treated for the purposes of subsection (4) as having been so certified.

**(3)** Where subsection (2) applies, the authorised officer may either—

- (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it—
  - (i) is not to be used for human consumption; and
  - (ii) either 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 a justice of the peace, and any person who knowingly contravenes the requirements of a notice under paragraph (a) is guilty of an offence.

**(4)** Where an authorised officer exercises the powers conferred by subsection (3)(a) above, he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that the food complies with food safety requirements and—

- (a) if he is so satisfied, shall forthwith withdraw the notice;
- (b) if he is not so satisfied, shall seize the food and remove it in order to have it dealt with by a justice of the peace.

**(5)** Where an authorised officer exercises the powers conferred by subsection (3)(b) or (4)(b), he shall inform the person in charge of the food of his intention to have it dealt with by a justice of the peace and—

- (a) any person who under section 8 might be liable to a prosecution in respect of the food shall, if he attends before the justice of the peace by whom the food falls to be dealt with, be entitled to be heard and to call witnesses; and
- (b) that justice of the peace may, but need not, be a member of the court before which any person is charged with an offence under that section in relation to that food.

**(6)** If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any food falling to be dealt with by him under this section fails to comply with food safety requirements, he shall condemn the food and order—

- (a) the food to be destroyed or to be so disposed of as to prevent it from being used for human consumption; and
- (b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the food.

(7) If a notice under subsection (3)(a) is withdrawn, or the justice of the peace by whom any food falls to be dealt with under this section refuses to condemn it, the food authority shall compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under subsection (7) shall be determined by arbitration.

(9) Subsections (3) to (8) shall also apply where, otherwise than on such an inspection, it appears to an authorised officer of the Food Authority that any food is likely to cause food poisoning or any disease communicable to human beings.

### **Detention notice**

**19. (1)** An authorised officer may, by a notice in writing (hereinafter referred to as a “detention notice”) served on the relevant food business operator or duly authorised representative, require the detention of any animal or food for the purpose of examination (including the taking of samples).

(2) An authorised officer must, as soon as satisfied that the animal or food need no longer be detained, withdraw the notice by a further notice in writing served on the food business operator or duly authorised representative.

(3) Any person who fails to comply with a detention notice commits an offence.

### **Sampling, examination and analysis of food**

**20. (1)** An authorised officer may—

- (a) purchase a sample of any food, or any substance capable of being used in the preparation of food;
- (b) take a sample of any food, or any such substance, which—
  - (i) appears to the officer to be intended for placing on the market or to have been placed on the market, for human consumption; or
  - (ii) is found by the officer on or in any premises which the officer is authorised to enter by or under section 13;
- (c) take a sample from any food source, or a sample of any contact material, which is found by the officer on or in any such premises; and
- (d) take a sample of any article or substance which is found by the officer on or in any such premises and which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of this Ordinance.

(2) An authorised officer of the Food Authority who has procured a sample under subsection (1) shall—

- (a) if the officer considers that the sample should be analysed, submit it to be analysed; and
- (b) if the officer considers that the sample should be examined, submit it to be examined by a food examiner.

## **PART 6 ADMINISTRATION**

### **Registration and licensing of premises**

**21. (1)** No person shall carry on a food business unless he has registered such a food business with the Food Authority and has received a licence permitting him to carry on such a food business from the Food Authority and has paid the prescribed fees.

**(2)** Upon receipt of the application for registration from the food business operator, an authorised officer of the Food Authority shall make an on-site visit and if such operator demonstrates compliance with the relevant requirements of this Ordinance, the Food Authority shall award the appropriate licence and approval, if required, under the Regulations.

**(3)** The Food Authority—

- (a)** may grant a conditional licence or approval if it appears from the on-site visit that the premises meets all the infrastructure and equipment requirements;
- (b)** a full licence or approval if it is evident from a new on-site visit carried out within three months of the granting of a conditional licence or approval, that the premises meets all other relevant requirements of this Ordinance and any relevant Regulations made under it:

Provided that if clear progress has been made, but the premises still does not meet all the requirements, the conditional licence or approval may be extended but this extension should not exceed a total of six months.

**(4)** Where the food business operates over more than one site or premises, each site or premises will require a separate licence and, if required, a separate approval number.

**(5)** The Food Authority shall maintain up-to-date lists of licenced and approved premises, with their respective approval numbers and other relevant information, which can be made available to the public and other interested parties.

**(6)** A licence to carry on a food business shall be valid for a period of 12 months from the date of issue, but may be suspended or withdrawn at any time by the Food Authority upon the violation of any provisions of this Ordinance or regulations made under section 7 by the person to whom the licence has been granted or by his agent, if any, in charge of the business.

**(7)** The licence shall be displayed in some conspicuous place in the food premises and if the licence is removed, damaged, hidden or obscured or allowed to become illegible, the person to whom the licence has been granted, or his agent, if any, in charge of the food shall be guilty of an offence.

**(8)** The prescribed fees shall be payable in respect of the registration and licencing requirements.

**(9)** Any person who carries on a food business without a valid licence is guilty of an offence.

### **Service of documents**

**22. (1)** Any document which is required or authorised under this Ordinance to be served on a food business operator, may be served—

- (a)** by delivering it to that operator;
- (b)** by leaving it or sending it in a prepaid letter addressed to such operator at his usual or last known residence;
- (c)** in the case of an incorporated company or body, by delivering it to their secretary at their registered or principal office, or by sending it in a prepaid letter addressed to the secretary at that office.

**(2)** Where a document is to be served on a food business operator under this Ordinance and it is not reasonably practicable to ascertain the name and address of the person on whom it should be served, or the premises of such operator are unoccupied, the document may be served by addressing it to such operator in the capacity of occupier of those premises (naming them), and—

- (a)** by delivering it to some other person at the premises; and

- (b) if there is no other person at the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

### **Time limit for prosecutions**

**23.** No prosecution for an offence under this Ordinance which is punishable under section 24 shall be commenced after three years from the commission of the offence.

### **Punishment**

**24.** Any person found guilty of an offence under this Ordinance is liable on conviction to a maximum penalty of a fine of £10,000 or imprisonment for a term of 18 months, or both, and, in the case of a continuing offence to a further fine of £30 for each day or part of a day during which the offence continues after a conviction is first obtained.

### **Offences by body corporate**

**25. (1)** Where an offence under this Ordinance which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of,—

- (a) any director, manager, secretary or other similar officer of the body corporate; or  
(b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**(2)** In subsection (1)(a) “director” in relation to a body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

### **Right of appeal**

**26. (1)** Any person who is aggrieved by—

- (a) a decision of an authorised officer to serve a hygiene improvement notice under section 14;  
(b) a decision of an authorised officer to serve a remedial action notice under section 15; or  
(c) a decision of an authorised officer to refuse a licence or approval or to withdraw or suspend a licence under section 21, may appeal to the Magistrates’ Court.

**(2)** The procedure on an appeal to the Magistrates’ Court under subsection (1) shall be by way of complaint for an order and the Magistrates’ Court Ordinance, 2011, applies to the proceedings.

**(3)** The period within which an appeal under paragraph (1) may be brought is—

- (a) 30 days from the date on which notice of the decision was served on the person desiring to appeal; or  
(b) in the case of an appeal against a decision to issue a hygiene improvement notice, the shorter of the period specified in paragraph (a) or the period specified in the notice pursuant to section 14(1)(d),

and the making of a complaint for an order shall be deemed for the purposes of this section to be the bringing of the appeal.

**(4)** On an appeal against a hygiene improvement notice or a remedial action notice, the court may cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.



(5) Where any period specified in a hygiene improvement notice pursuant to section 14(1)(d) would otherwise include any day on which an appeal against that notice is pending, that day shall be excluded from that period.

(6) Any appeal shall be regarded as pending for the purposes of subsection (5) until it is finally disposed of, is withdrawn or is struck out for want of prosecution.

### **Amendment of legislation and transitional provisions**

**27. (1)** The Public Health Ordinance, Cap. 49, is amended—

(a) by repealing the definitions of “aerated water factory”, “bakehouse”, “dairy”, “dairyman”, “slaughterer” and “slaughterhouse”;

(b) by repealing sections 12, 13, 14, 15, 16, 17, 18, 19, 43 and 54;

(c) by deleting the word and character “bakehouse,” in section 58(1).

(2) The Fish and Fish Products Ordinance, 2010, is amended by deleting the words “Public Health Ordinance, Cap. 49” in section 4(3) and substituting “Food Safety Ordinance, 2016” therefor.

(3) The Governor in Council may, in any regulations issued under this Ordinance, make provisions for transitional measures which may be required in respect of the repeal of any Regulations issued under the Public Health Ordinance, Cap. 49.

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#### **EXPLANATORY NOTE**

*(This note does not form part of the Ordinance)*

The purpose of this Ordinance is to review the provisions for the regulation of the production, trade and handling of food to promote food safety and to introduce standards of hygiene in the food business.