



THE FOOD SAFETY (NORTHERN IRELAND) ORDER 1991 – A GUIDE FOR FOOD BUSINESSES

2009 Edition

Summary

Intended audience:	The Guidance Notes are intended for food businesses.
Regional coverage:	The Guidance Notes are applicable to Northern Ireland.
Legal status:	The Guidance Notes are intended to provide regulatory guidance on the Food Safety (Northern Ireland) Order 1991.
Purpose:	The Guidance Notes provide guidance on the requirements of the Food Safety (Northern Ireland) Order 1991 in the light of amendments to the Order and other relevant legislation.

REVISION HISTORY

Revision No.	Revision date	Purpose of revision	Revised by
1	17 June 2008	Draft for consultation	Kathryn Baker
2	2 November 2009	Final version	Kathryn Baker

CONTENTS

INTRODUCTION	5
Intended Audience	5
Purpose and Legal Status of Guidance Notes	5
Foreword	5
Summary of Responsibilities	7
THE FOOD SAFETY (NORTHERN IRELAND) ORDER 1991.....	8
MAIN AIMS, SCOPE AND DUTIES	8
What is the Food Safety (Northern Ireland) Order 1991?	8
What does the Order aim to achieve?.....	8
What is the scope of the Order?	8
Does the Food Safety Order stand alone?	8
What does the Order mean by ‘food’?	9
What activities are covered by the Order?	9
Does the Order affect farmers and growers?.....	10
What does the Order mean for food importers?	10
What does the Order require food businesses to do?	10
THE MAIN OFFENCES.....	11
What are the main offences under the Food Safety Order?	11
What is meant by ‘rendering food injurious to health’? (Article 6)	11
When is food ‘not of the nature or substance or quality demanded’? (Article 13)	12
How can food be ‘falsely or misleadingly described or presented’? (Article 14)	13
What penalties can be imposed under the Order?	13
DEFENCES TO THE OFFENCES UNDER THE FOOD SAFETY (NORTHERN	
IRELAND) ORDER 1991.....	14
What is the legal defence of ‘due diligence’?	14
Can retailers of ‘own label’ products offer the defence of ‘due diligence’?.....	14
Can retailers of ‘branded’ goods offer the defence of ‘due diligence’?.....	15
What other defences are there?	15
ENFORCING THE ORDER	15
Who enforces the Order?.....	15
What is the role of the Food Standards Agency (FSA)?	16
What is the role of the Department of Agriculture and Rural Development (DARD)? ..	16

What is the role of Local Government?	16
What are the roles of public analysts and food examiners?	16
How is the Order enforced?	16
What powers of entry do authorised officers have?	17
What is meant by 'premises'?	17
What are the limits to the authorised officers' powers of entry?	17
Can officers disclose all the information they find during a visit?	17
Can authorised officers take samples of food?	18
What happens if authorised officers find suspect food?	18
What happens if food is seized but then not condemned?	18
What other powers may be used under the Order by authorised officers when inspecting food premises?	19
What are emergency control orders?	19
What are Food Alerts?	20
Is there an appeals procedure against actions under the Food Safety Order?	20
APPENDIX 1 - SOME USEFUL ADDRESSES	21
CENTRAL GOVERNMENT	21
CONSUMER GROUPS	22
General Consumer Council for NI.....	22
ENFORCEMENT BODIES	22
CO-ORDINATING BODIES	27
APPENDIX 2 - KEY PROVISIONS OF THE FOOD SAFETY (NORTHERN IRELAND) ORDER 1991	29
PART I: INTRODUCTORY	29
PART II: GENERAL PROVISIONS AS TO FOOD	29
PART III: ADMINISTRATION AND ENFORCEMENT	30
PART IV: MISCELLANEOUS AND SUPPLEMENTAL	31

INTRODUCTION

Intended Audience

1. These Guidance Notes are aimed at food businesses.

Purpose and Legal Status of Guidance Notes

2. The Guidance Notes have been produced to provide informal, non-binding advice on the legal requirements of the Food Safety (Northern Ireland) Order 1991 and should be read in conjunction with the legislation itself. The text should not be taken as an authoritative statement or interpretation of the law, as only the courts have this power. Every effort has been made to ensure that these Guidance Notes are as helpful as possible. However, it is ultimately the responsibility of individual businesses to ensure their compliance with the law. Businesses with specific queries may wish to seek the advice of their local enforcement authority¹. There is further relevant information on the Food Standards Agency website www.food.gov.uk.

Foreword

3. The safety of food is vital to all consumers and food businesses. Consumers must have confidence that the food they buy and eat will be what they expect, will do them no harm and that they are protected from fraud. The importance of this confidence cannot be underestimated for businesses.
4. Although food safety legislation affects everyone in the country, it is particularly relevant to anyone working in the production, processing, storage, distribution and sale of food, no matter how large or small the business. This includes non-profit making organisations.
5. As a food business, you should familiarise yourself with the Food Safety (Northern Ireland) Order 1991 (http://www.opsi.gov.uk/si/si1991/Uksi_19910762_en_1.htm), which, although it has been changed substantially following the introduction of European food safety legislation, remains very important primary food safety legislation. It has provided the basis and a flexible framework for much domestic food law and applies to Northern Ireland². It concentrates on fundamental issues and leaves the detail to secondary legislation (which is not specifically covered in this guide).
6. The guide focuses on the aspects of the Order which are of most significance to food businesses, i.e.

¹ The enforcement authorities for food law in Northern Ireland are the Department of Agriculture and Rural development (DARD) and district councils.

² Similar legislation exists in Great Britain, the Food Safety Act 1990. FSA have produced a separate guide to this Act.

- what the Order requires;
 - the offences under the legislation and possible defences;
 - other actions which can be taken by enforcement authorities;
 - possible defences to these actions.
7. We advise managers of **medium-sized and larger food businesses** to read the guide in detail and to make the information about the main offences known to all relevant staff. **Small businesses** should all note their responsibilities listed at the end of this introduction and use the rest of the guide to help them better understand these, and for reference about the defences to any legal action and the powers available to enforcement officers.
8. Since 1999 there have been significant changes in food safety law in the United Kingdom. In particular, the European Union (EU) adopted the General Food Law Regulation (Regulation (EC) 178/2002), which came fully into effect in 2005. This Regulation created new laws on food safety, traceability, withdrawal and recall of products. Offences for breaches of these laws have been put into effect in Northern Ireland by the General Food Regulations (Northern Ireland) 2004, which has also made changes to the Food Safety (Northern Ireland) Order 1991 itself. In addition, the Food Safety (Northern Ireland) Order 1991 (Amendment) Regulations (Northern Ireland) 2004 changed the definition of “food” in the Food Safety Order to bring it in line with Regulation (EC) 178/2002. [Guidance Notes on the General Food Law Regulation \(EC\) 178/2002](#) were published in 2007. These are available at <http://www.food.gov.uk/foodindustry/guidancenotes/foodguid/generalfoodlaw> . (Small businesses may wish to refer in particular to the summary at paragraph 8 of those Guidance Notes).
9. Food hygiene requirements for businesses are made under powers given by the Food Safety (Northern Ireland) Order 1991 and the European Communities Act 1972 rather than in the Order itself. These are dealt with separately under food law and are covered by the Food Hygiene Regulations (Northern Ireland) 2006³ (as amended). There is detailed guidance on food hygiene legislation at <http://www.food.gov.uk/multimedia/pdfs/fsaguidefoodhygleg.pdf> . Most hygiene enforcement provisions are now made under this legislation rather than the Order. Other legislation made under the Order is not covered in this guide.
10. This guidance concentrates on what the main provisions of the Order mean rather than what has to be done to set up a safe food system. It does not provide information on the requirement⁴ to operate a food safety management system based on HACCP (Hazard Analysis Critical Control Point) principles. Information on this and the Agency’s guidance to help small businesses comply with the requirement can be found at <http://www.food.gov.uk/foodindustry/regulation/hygleg/hyglegresources> .

³ There are separate versions of the Food Hygiene Regulations 2006 in England (No.14), Scotland (No.3) and Wales (Welsh S.I. No.31 (W.5))

⁴ Article 5(1) of Regulation (EC) 852/2004

Summary of Responsibilities

11. The Order applies to all types of food businesses.
12. Your main responsibilities under the Order are:
 - to ensure you do not include anything in food, remove anything from food or treat food in any way which means it would be damaging to the health of people eating it;
 - to ensure that the food you serve or sell is of the nature, substance or quality which consumers would expect;
 - to ensure that the food is labelled, advertised and presented in a way that is not false or misleading.

THE FOOD SAFETY (NORTHERN IRELAND) ORDER 1991

MAIN AIMS, SCOPE AND DUTIES

What is the Food Safety (Northern Ireland) Order 1991?

13. The Food Safety (Northern Ireland) Order 1991 is wide-ranging legislation on food safety and consumer protection in relation to food throughout Northern Ireland.

What does the Order aim to achieve?

14. The main aims of the Order are:
- to ensure that all food meets consumers' expectations in terms of nature, substance and quality and is not misleadingly presented;
 - to provide legal powers and specify offences in relation to public health and consumers' interest; and
 - to enable Northern Ireland to fulfil its part of the United Kingdom's responsibilities in the European Union.

What is the scope of the Order?

15. The Order covers activities throughout the food distribution chain, from primary production through distribution to retail and catering.
16. The Order gives the Department⁵ powers to make regulations on matters of detail. The Food Standards Agency is the principal Government Department responsible for preparing specific regulations under the Order.

Does the Food Safety Order stand alone?

17. No. Regulation (EC) 178/2002 (the General Food Law Regulation), which now provides the basic framework for food law in the EU and UK, is also important food safety legislation and contains key provisions on food safety (Article 14), presentation (Article 16), traceability (Article 18) and withdrawal, recall and notification of unsafe food (Article 19). Details of where to find Guidance Notes for this Regulation, which should also be read, are at paragraph 8. There is a summary of all the general food law requirements at <http://www.food.gov.uk/foodindustry/regulation/foodlaw>.
18. The General Food Regulations (Northern Ireland) 2004 and the Food Safety (Northern Ireland) Order 1991 (Amendment) Regulations (Northern Ireland) 2004 make substantial amendments to the Food Safety (Northern Ireland) Order 1991:
- to implement the requirements of Regulation (EC) 178/2002 and

⁵ 'Department' means the Department of Health, Social Services and Public Safety

- provide penalties for breaches of these requirements.
19. Many of the key provisions in food law are contained in regulations on more specific areas, which may be made under the powers given in the Food Safety (Northern Ireland) Order 1991 or other legislation such as the European Communities Act 1972. Food businesses also have responsibilities under these regulations. Particularly important are Regulations dealing with:
- food labelling (e.g. the Food Labelling Regulations (Northern Ireland) 1996);
 - food hygiene (e.g. the Food Hygiene Regulations (Northern Ireland) 2006)⁶;
 - meat and meat products (such as those concerned with the examination for residues and maximum residue limits);
 - food composition;
 - novel foods;
 - food additives; and
 - packaging materials.

What does the Order mean by ‘food’?

20. ‘Food’ (or “foodstuff”) means⁷:

“any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans.” ‘Food’ includes drink, chewing gum and any substance, including water, intentionally incorporated into the food during its manufacture, preparation or treatment. It includes drinking water after the point of compliance (which is generally when it comes out of the tap).

21. ‘Food’ does not include:

- animal feed;
- live animals unless they are prepared for placing on the market for human consumption (e.g. oysters);
- plants prior to harvesting;
- medicinal products;
- cosmetics;
- tobacco and tobacco products;
- narcotic or psychotropic substances;
- residues and contaminants.

What activities are covered by the Order?

22. The Order covers operations involved in

- selling and possessing with a view to sale;

⁶ See footnote 2.

⁷ The full text, which refers to specific legislation, is in Article 2 of Regulation (EC) 178/2002.

- free supply in the course of a business⁸;
- consigning and delivering;
- preparing;
- presentation and labelling;
- storing;
- transporting and
- importing and exporting food.

23. The Order does not in itself cover hygiene, on which there is separate legislation made using the powers given under the Order, or food prepared in the home for domestic purposes. It does cover food prepared by childminders in their homes for other people's children and extends to activities such as preparation of food in canteens, clubs, schools, hospitals, institutions and district councils.

Does the Order affect farmers and growers?

24. Most farmers are considered to be running food businesses, which the Order describes as "any business in the course of which commercial operations with respect to food or food sources are carried out". As food businesses, farms are subject to the improvement and closure procedures outlined at paragraphs 72-76, and if farmers sell food directly to the consumer, they will be subject to the provisions relating to the sale of food.

What does the Order mean for food importers?

25. The European Union is a single market and therefore there are no import controls at borders on food being brought in from other Member States. However, importers of food from countries outside the EU have to comply with the requirements of EU food law or equivalent conditions.⁹ Imported food has to meet food safety and food hygiene requirements equivalent to those for UK-produced food and can be subject to checks by enforcement authorities at UK points of import and during general enforcement activities.

26. All imported food remains covered by all the main offences outlined in paragraph 28-29. Enforcement authorities have a range of powers to deal with suspect imported food. Therefore, like other UK food businesses, importers have to take all reasonable precautions and exercise due diligence to avoid committing an offence. They cannot rely solely on warranties provided by someone beyond the jurisdiction of the courts of Northern Ireland.

What does the Order require food businesses to do?

27. In summary, food businesses must ensure that they comply with the Order by not:

⁸ Under Article 2(4)(a) of the Order, the supply of the food, otherwise than on sale, in the course of a business, shall be deemed to be a sale of the food.

⁹ Article 11 of Regulation (EC) 178/2002

- rendering food injurious to health (see paragraphs 30-32);
- selling food which is not of the nature or substance or quality demanded to the purchaser's prejudice (see paragraphs 33-34);
- falsely describing or presenting food (see paragraphs 35-37).

THE MAIN OFFENCES

What are the main offences under the Food Safety Order?

28. The main offences are:

- rendering food injurious to health (Article 6);
- selling, to the purchaser's prejudice, food which is not of the nature or substance or quality demanded (Article 13); and
- falsely or misleadingly describing or presenting food (Article 14).

29. The previous offence in Article 7 of this Order of selling or supplying food not complying with food safety requirements no longer exists, owing to amendments in the General Food Regulations (Northern Ireland) 2004 (as amended) as a result of Regulation (EC) 178/2002. **Please see the FSA Guidance Notes on Regulation (EC) 178/2002 referred to in paragraph 8 of this guide for the offence created under the General Food Regulations 2004 of failing to comply with Article 14(1) of Regulation (EC) 178/2002, i.e. placing unsafe food on the market.**

What is meant by 'rendering food injurious to health'? (Article 6)

30. If a person renders (which means "makes") a food injurious to health:

- by adding an article or substance to it;
- using an article or substance as an ingredient in its preparation;
- abstracting (which means "taking away") any constituent from it; or
- subjecting it to any other process or treatment

then they are guilty of an offence.

An example of where a food would be rendered injurious to health by someone working in a food business adding an article or substance to it or using it as an ingredient in its preparation might be an additive, which had not been approved and which damaged the consumer's health. Removing (abstracting) a necessary preservative could make a food injurious to health.

In considering whether any food is injurious to health, you should look at:

- the probable immediate or short/ long-term effects of the food on the consumer;

- probable toxic effects including those where these result from a combination of substances in the food or the particular health sensitivities of a specific category of consumers where the food is intended for that category, for example when it contains an allergen.
31. So, adding excessive amounts of sugar to a product aimed at diabetics could render the food injurious to health. The offence applies whether the act is deliberate or not (subject to the due diligence test described in paragraphs 42-48)
32. There is an overlap between this provision and the offence in the General Food Regulations (Northern Ireland) 2004 (as amended)¹⁰ of marketing unsafe food. The offence in the Food Safety Order is only relevant, however, when the specific actions mentioned are applied to the food.

When is food ‘not of the nature or substance or quality demanded’? (Article 13)

33. 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. The ‘purchaser’ of food can range from a customer at a shop, to one company buying from another. A person may be considered to be a ‘purchaser’ even if no money actually changes hands directly, e.g. winning prizes in a raffle.

In practice:

“nature” covers a product sold as one thing, but which is in fact another, e.g. haddock sold as cod;

“substance” covers situations where the food contains foreign bodies (e.g. an insect) or damaging residues or where there is a statutory or other standard for a food and the substance falls below it, for example milk powder with below the minimum milk protein level. The necessary substance for particular products is set through compositional standards in commodity regulations for which separate guidance exists;

“quality” covers commercial quality, having regard to any statutory standards of composition in the food, so an example of food which would not be of the quality demanded would be a stale cake.

34. There are often overlaps between these three phrases and with the provision on unfit food in Article 14 of Regulation (EC) 178/2002. The offence only applies when the purchaser is “prejudiced”, which is when the food being not of the nature or substance or quality demanded is detrimental to them.

¹⁰ Regulation 4(b)

How can food be ‘falsely or misleadingly described or presented’? (Article 14)

35. This Article says that any person who labels or advertises food in a way that falsely describes it, or labels, advertises or presents food in a way which misleads as to its nature, substance or quality, is guilty of an offence. The offence can occur when statements are untrue or pictures of food are presented in a misleading way. The offence also covers material that is correct but given such emphasis that the purchaser is led to the wrong conclusion.

An example of where food might be misleadingly presented would be products which are not cream but which are presented in traditional cream cartons and displayed amongst them.

36. There is a further offence of misleading presentation in the General Food Regulations (Northern Ireland) 2004, resulting from Regulation (EC) 178/2002. However, that offence only applies when the consumer is misled; the Food Safety Order offence would also apply both to where consumers and other businesses are misled. The Consumer Protection from Unfair Trading Regulations 2008¹¹ also creates offences for misleading actions or omissions and other unfair or aggressive commercial practices. Guidance on these Regulations is available at http://www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf
37. Besides the general offence of falsely or misleadingly describing or presenting food, there are also detailed regulations about the labelling of food. These are the Food Labelling Regulations (Northern Ireland) 1996, as amended, and guidance on these is at <http://www.food.gov.uk/foodindustry/guidancenotes/labelregsguidance/foodlabelregsguid>.

What penalties can be imposed under the Order?

38. The courts decide the level of penalties depending on the circumstances of each case, but the Order sets the maximum penalties available to the courts.
39. Magistrates' courts may impose a fine of up to £5,000 per offence and/or a prison sentence of up to six months.
40. For offences under Article 6 and 14 of the Order, the maximum fine a magistrates' court may set for each offence is £20,000. There are also penalties for obstructing an authorised officer.
41. Regulations made under the Order may set their own level of penalties which will not exceed those listed above.

¹¹ The Consumer Protection from Unfair Trading Regulations 2008 is enforced in NI by the Department of Enterprise, Trade and Investment and Trading Standards Service

DEFENCES TO THE OFFENCES UNDER THE FOOD SAFETY (NORTHERN IRELAND) ORDER 1991

What is the legal defence of ‘due diligence’?

42. There are two defences under the Food Safety Order which apply to the main offences described so far in this guide, and the principal one is the defence of ‘due diligence’.
43. ‘Due diligence’ is a defence which is designed to balance the protection of the consumer against defective food with the right of traders not to be convicted of an offence they have taken all reasonable care to avoid committing. The result should be to encourage all concerned to take proper responsibility for their products.
44. This defence is available where the person charged proves that they ‘took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control’¹². Although the burden of proof lies with the person or company accused, they need not establish their case beyond all reasonable doubt. They need only persuade the court that they exercised due diligence on the balance of probabilities.
45. The courts will decide what ‘reasonable care’ in each case is and will take account of all the facts in that case. For example, a small business might not be required to undertake the same precautions which would be expected of one of the major retailers.
46. Part of the ‘due diligence’ defence may be to show that someone else was at fault. If this is claimed, the food business must give the prosecution information that will enable them to identify who was responsible for the offence. This must be done seven days before the hearing or, if the defendant has already appeared before the court, within one month of that appearance.
47. The defence of due diligence also applies to offences under the General Food Regulations (Northern Ireland) 2004 and the Food Hygiene Regulations (Northern Ireland) 2006.¹³

Can retailers of ‘own label’ products offer the defence of ‘due diligence’?

48. Yes. Retailers of ‘own label’ products can be deemed to satisfy the ‘due diligence’ defence if they can prove that:
 - the offence was someone else’s fault (so long as that person was not under the defendant’s control as an employee normally would be) or resulted from their relying on information supplied by that person;

¹² Article 20 of the Order.

¹³ There are separate versions of the Food Hygiene Regulations 2006 for the different UK administrations, see footnote 3.

- they made reasonable checks on the food or reasonably relied on checks made by the supplier; and
- they had no reason to suspect that they were committing an offence.

Can retailers of ‘branded’ goods offer the defence of ‘due diligence’?

49. Yes. Retailers of ‘branded’ goods can be deemed to satisfy the ‘due diligence’ defence if they can prove that:
- the offence was someone else’s fault (so long as that person was not under the defendant’s control as an employee normally would be) or resulted from their relying on information supplied by another person; and
 - they could not reasonably have been expected to know that they were committing an offence.
 - In this instance the retailer is not required to have carried out reasonable checks of the food supplied to him.

What other defences are there?

50. Besides ‘due diligence’, the other defences specified by the Order are:
- i. where the commission of an offence was due to the act or default of another person; and
 - ii. a defence for those charged with an offence related to the advertisements for sale of food, whose business it is to publish or arrange for the publication of such advertisements and who had no reason to suspect that publishing or arranging to publish an advertisement in the course of their business would amount to an offence. However, regulations made under the Order can set their own defences.

ENFORCING THE ORDER

Who enforces the Order?

51. The day-to-day work of enforcement is, in the main, the responsibility of the enforcement authorities¹⁴. The Food Standards Agency enforces some regulations made under the Order (for example, licensing of irradiated food facilities) and has scope to become involved in certain emergency situations (please see paragraphs 79-80 – Food Alerts) or where a district council fails to discharge its responsibilities under the Order.

¹⁴ See Footnote 1

What is the role of the Food Standards Agency (FSA)?

52. In NI the Food Standards Agency is the competent authority for food law. In practice day to day responsibility for the enforcement of food legislation is divided between the Department of Agriculture and Rural Development (DARD) and district councils. The Food Standards Agency advises district councils on enforcement, particularly through the issuing of statutory Food Law Codes of Practice – separate codes of practice are available for England, Scotland, Wales and Northern Ireland. The Agency has also issued separate Practice Guidance documents to complement the Codes. For instance, the Codes advise on the timing and frequency of inspections for food businesses. The Codes and associated Practice Guidance are available on the Agency's website at <http://www.food.gov.uk/enforcement/enforcework/foodlawcop/copni/>.

What is the role of the Department of Agriculture and Rural Development (DARD)?

53. DARD officials from Veterinary Service - Veterinary Public Health Unit are authorised by the Food Standards Agency to carry out inspection and enforcement duties in abattoirs and meat processing establishments. Quality Assurance Branch officials are authorised by Food Standards Agency Northern Ireland to carry out inspection and hygiene enforcement duties at primary production level, in milk processing plants and egg packing stations.

What is the role of Local Government?

54. Environmental Health Officers in district councils are responsible for enforcing food law in most other food establishments. The principal responsibilities of environmental health officers are hygiene, cases of microbiological contamination of foods, and with food which, for any reason including chemical contamination, is unsafe. They also ensure that food is correctly and accurately labelled that it contains legal ingredients and that any claims made are truthful. They also act on national food safety alerts and issue press releases to inform local businesses and consumers about product recalls or food alerts.

What are the roles of public analysts and food examiners?

55. In Northern Ireland, the public analysts and food examiners are appointed by district councils to provide advice and carry out food analysis and examination in consultation with enforcement teams.

How is the Order enforced?

56. The Order provides that authorised officers of enforcement authorities can:
- take samples of food and food ingredients;
 - enter food premises unannounced to investigate possible offences; and

- inspect food to see if it is safe.
57. Authorised Officers may also detain suspect food or seize it and make an application to a Justice of the Peace (JP).
58. Authorised officers must be given the information and assistance which they reasonably require. More details of these powers are set out in the following paragraphs.

What powers of entry do authorised officers have?

59. To carry out their duties, authorised officers have the right to enter any premises unannounced within their district. They also have power, in certain circumstances, to enter food business premises anywhere in the country. However, in practice, they only use this power when following up offences which have occurred in their own area.
60. Authorised officers may inspect premises, processes and records and may seize or copy any relevant records and take samples of food for analysis or examination. They may also take their own visual records, such as still photographs and videos. In appropriate circumstances, for example when an initial request for entry has been refused, officers can apply to a magistrate for a warrant authorising the officer to enter the premises.

What is meant by ‘premises’?

61. The definition of ‘premises’ in the Order is very broad. It includes the obvious buildings where food is prepared, stored or sold, such as food processing plants, supermarkets or restaurants. It also covers farms and vehicles used for transporting or delivering food, ships, aircraft, road-side and market stalls and also private dwellings if used by food businesses.

What are the limits to the authorised officers’ powers of entry?

62. Authorised officers of enforcement authorities may enter any premises within their district to carry out an inspection and to ensure food legislation is not contravened. They must carry evidence of their identity.
63. They may also enter any business premises, whether within or outside their district, to establish whether there is any evidence on the premises of any breach of the law which has occurred within their district.
64. An authorised officer may enter premises at all reasonable hours, for instance if they are investigating an outbreak of food poisoning. However, they must give at least 24 hours notice of their intention to enter houses which are used only as private dwellings.

Can officers disclose all the information they find during a visit?

65. Authorised officers commit an offence if they reveal commercially sensitive information learnt in the course of an official visit, unless the disclosure is made in the proper course of their duties.

Can authorised officers take samples of food?

66. Authorised officers may take samples of food for analysis, microbiological examination or other investigation. Samples may also be purchased from food premises (or may be received from a member of the public complaining about food from a particular business). Analysis and microbiological examination of food are carried out by public analysts and food examiners respectively.

What happens if authorised officers find suspect food?

67. Authorised officers may inspect, at any reasonable time, any food which has been sold or is intended for sale. If they suspect that the food does not comply with food safety requirements, whether or not this is during the course of an inspection, they may issue the food business operator with a notice requiring the food to be kept in a specific place and not to be used for human consumption while they investigate. This is called a decision to detain the food. Alternatively, they may feel that no investigation is needed and seize the food and have it removed to be dealt with by a JP.
68. If they decide to detain the food, the officers have up to 21 days to carry out their investigations. If they conclude that the food is in fact not unsafe, they must withdraw their notice and restore the food to the food business operator. If their opinion is that the food is unsafe, they must seize the food and put the matter to a JP. When officers do this, they must serve a Detention of Food Notice. When food is seized, written notification (Detention of Food Notice) of the seizure should be issued as soon as is reasonably practicable, which should include details of the type and quantity of the food seized, including any distinguishing marks, codes, dates etc. A Withdrawal of Detention of Food Notice should be served if evidence suggests that detained food may be released. A Food Condemnation Notification should be given to the person in charge of the food warning them that the officer intends to have the food dealt with by a JP to apply for its condemnation.
69. When food has been seized and a hearing takes place before a JP, it may well be that someone may later face criminal proceedings in relation to the food. In such a case, that person can make representations and call witnesses.
70. If a JP decides that food is unsafe, they must order it to be destroyed or otherwise disposed of, and the owner of the food ordered to meet the expenses incurred.

What happens if food is seized but then not condemned?

71. If food detained or seized by an authorised officer is not eventually condemned by a JP, but has deteriorated due to the time that has passed,

then the owner is entitled to compensation equal to the food's loss in value. If the enforcement authority and the owner of the food cannot agree on the amount of compensation, the dispute must be settled by arbitration.

What other powers may be used under the Order by authorised officers when inspecting food premises?

Improvement notices and prohibition orders

72. Improvement notices, which require food business operators to take specific measures in respect of their business, and prohibition orders, which prohibit processes or treatments of food or the use of particular premises or equipment, may be issued under the Food Safety (Northern Ireland) Order 1991. However, in almost all cases these are now issued in the form of hygiene improvement notices and hygiene prohibition orders under the Food Hygiene Regulations (Northern Ireland) 2006.¹⁵

Emergency prohibition orders and notices

73. If an authorised officer has evidence of an imminent risk of injury to health then the emergency prohibition procedure may be used under the Order. In this instance an emergency prohibition notice may be served on the food business operator followed by an application to a Magistrates court for an emergency prohibition order.
74. An emergency prohibition order can close down part or the whole of a food business depending on the nature of the risk to health.
75. Emergency prohibition orders might be served on a food business operator, for example, where a process or treatment exists that introduces a genotoxic chemical (one that damages genes or chromosomes) into food, the effects of which may increase the risk of cancer in the future.
76. An alternative to issuing emergency prohibition orders is the use of voluntary procedures to remove an imminent risk to health. These apply when the business agrees that an imminent risk to health exists and offers to close voluntarily in discussion with an authorised officer.

What are emergency control orders?

77. There may be times when public health cannot be protected simply by closing an individual business - for example, if a business is producing unsafe food which has already been distributed around the country. Closing the business would prevent more contaminated food reaching the market, but it would not remove the food already in circulation.

¹⁵ Improvement Notices and Prohibition Orders can still be issued under the Food Safety (Northern Ireland) Order 1991 for breaches of the Animal By-Products (Identification) Regulations 1995, the Food (Control of Irradiation) Regulations (Northern Ireland) 1992 and the Ungraded Eggs (Hygiene) Regulations (Northern Ireland) 1990.

78. The Order gives the Government powers to make emergency control orders. These are control measures to remove substantial threats to public health, e.g. prevention of distribution and sale of contaminated food. These are steps which many firms would take on a voluntary basis.

What are Food Alerts?

79. Where a risk is identified as a result of enforcement action taken by authorised officers, the Food Standards Agency may issue Food Alerts, which let district councils and consumers know about any specific problems associated with food and in some cases, provide details of specific action to be taken. Food Alerts are not issued under the Food Safety (Northern Ireland) Order 1991, but the system has been set up by the Food Standards Agency under the Rapid Alert System for Food and Feed set down in Regulation (EC) 178/2002 and is included here because it is an additional enforcement measure to those specified above.
80. A Food Alert for Information advises the councils that a product has been withdrawn or recalled by a company and no further action is required by them. A Food Alert for Action is issued when it is necessary to remove a food product from the market rapidly when it may pose an imminent risk to health. The specific actions required of the councils are communicated in the Alert. All Food Alerts are placed on the Food Standards Agency's website at <http://www.food.gov.uk/enforcement/alerts/>. When a Food Alert relates to a product that has been imported into the UK or exported from the UK to other Member States or third countries, the Government issues a Rapid Alert System for Food and Feed (RASFF) notification to the European Commission.

Is there an appeals procedure against actions under the Food Safety Order?

81. Yes. Anyone running a food business can appeal to a Magistrates' court:
- if an enforcement authority refuses to issue a certificate lifting an emergency prohibition order; or
 - if an enforcement authority closes a business by refusing, cancelling, suspending or revoking registration.¹⁶
82. When there is the right of appeal, this will be made clear in a written notice of the enforcement authority's decision, which will also give the period during which an appeal may be brought. This will normally be one month.
83. If people appealing to Magistrates' court are unhappy with its decision, they have the right of further appeal to the Crown court. For instance, where a Magistrates' court has dismissed an earlier appeal or where it has made a decision - such as the imposition of a prohibition order - which is disputed.

¹⁶ Appeals can also be made against improvement notices, which can be issued under the Food Safety (Northern Ireland) Order 1991 in the limited circumstances given in Footnote 15.

APPENDIX 1 - SOME USEFUL ADDRESSES

CENTRAL GOVERNMENT

Food Standards Agency (Northern Ireland)
10C Clarendon Road
Belfast BT1 3BG
Tel: 028 9041 7700
e-mail: infofsani@foodstandards.gsi.gov.uk

Food Standards Agency
Aviation House
125 Kingsway
London WC2B 6NH
Tel: 020 7276 8000
e-mail: helpline@foodstandards.gsi.gov.uk
or find a particular topic at www.food.gov.uk

Food Standards Agency (Scotland)
St Magnus House
6th Floor
25 Guild Street
Aberdeen AB11 6NJ
Tel: 01224 285100
e-mail: Scotland@foodstandards.gsi.gov.uk

Food Standards Agency (Wales)
11th Floor
Southgate House
Wood Street
Cardiff CF10 1EW
Tel: 029 2067 8999
e-mail: Wales@foodstandards.gsi.gov.uk

Department of Health, Social Services and Public Safety
Castle Buildings
Stormont Estate
Belfast
BT4 3SJ
Tel: 028 3052 0500
e-mail: webmaster@dhsspsni.gov.uk

Department of Agriculture and Rural Development
Dundonald House
Upper Newtownards Road
Belfast BT4 3SB
Northern Ireland
Tel: 028 9052 4999
email: www.dardni.gov.uk

Trading Standards Service
Department of Enterprise, Trade and Investment
176 Newtownbreda Road
Belfast
BT8 6QS
Tel: 028 9025 3900
[e-mail: tss@detini.gov.uk](mailto:tss@detini.gov.uk)

CONSUMER GROUPS

Which?
2 Marylebone Road
London NW1 4DF
Tel: 020 7486 5544
e-mail: which@which.co.uk

General Consumer Council for NI
Elizabeth House
116 Holywood Road
BELFAST
BT4 1NY
Tel: 028 90 672 488
Email: info@consumercouncil.org.uk

ENFORCEMENT BODIES

Environmental Health Department
Antrim Borough Council
The Steeple
Steeple Road
ANTRIM BT41 1BJ
(T) - 028 94 481319
www.antrim.gov.uk

Environmental Health Department
Ards Borough Council
2 Church Street
Newtownards BT23 4AP
(T) - 028 91 824050
www.ards-council.gov.uk

Environmental Services
Armagh City & District Council
The Palace Demesne
Armagh BT60 4EL
(T) - 028 37 529626
www.armagh.gov.uk

Health and Environmental Services
Ballymoney Borough Council
Riada House
14 Charles Street
Ballymoney BT53 6DZ
Tel: - 028 27 660257
e-mail: info@ballymoney.gov.uk
www.ballymoney.gov.uk

Environmental Health Department
Ballymena Borough Council
Ardeevin'
80 Galgorm Road
Ballymena BT42 1AB
Tel: - 028 25 660378
e-mail: environmental.health@ballymena.gov.uk
www.ballymena.gov.uk

Environmental Health Department
Banbridge District Council
Civic Building
Downshire Road
Banbridge BT32 3JY
Tel: - 028 40 660606
e-mail: eh@banbridge.gov.uk
www.banbridge.gov.uk

Environmental Health Department
Belfast City Council
The Cecil Ward Building
4-10 Linenhall Street
Belfast BT2 8BP
Tel: - 028 90 270468
e-mail: h&es@belfastcity.gov.uk
www.belfastcity.gov.uk

Environmental Services
Carrickfergus Borough Council
Town Hall
Joymount
Carrickfergus BT38 7DL
Tel: - 028 93 358000
e-mail: info_envhealth@carrickfergus.org
www.carrickfergus.org

Environmental Health Department
Castlereagh Borough Council
1 Bradford Court
Upper Galwally
Belfast BT8 6RB

Tel: - 028 90 494640

e-mail: environmentalhealth@castlereagh.gov.uk

www.castlereagh.gov.uk

Environmental Health Department

Coleraine Borough Council

Cloonavin

66 Portstewart Road

Coleraine BT52 1EY

Tel: - 028 70 347171

e-mail: eh@colerainebc.gov.uk

www.colerainebc.gov.uk

Environmental Health Department

Down District Council

24 Strangford Road

Downpatrick BT30 6SR

Tel: - 028 44 610823

e-mail: env.health@downdc.gov.uk

www.downdc.gov.uk

Environmental Health Department

Craigavon Borough Council

Civic Centre

PO Box 66, Lakeview Road

Craigavon BT64 1AL

Tel: - 028 38 312521

www.craigavon.gov.uk

Environmental Health Department

Derry City Council

98 Strand Road

Londonderry BT48 6DQ

Tel: - 028 71 376649

www.derrycitycouncil.gov.uk

Environmental Health Department

Cookstown District Council

Council Offices

Burn Road

Cookstown BT80 8DT

Tel: - 028 86 762205

e-mail: envhealth@cookstown.gov.uk

www.cookstown.gov.uk

Environmental Health Department

Dungannon & South Tyrone District Council

Circular Road

Dungannon BT71 6DT

Tel: - 028 87 720365 / 367

e-mail: environmental.health@dungannon.gov.uk

www.dungannon.gov.uk

Environmental Health Department

Fermanagh District Council

Town Hall

Enniskillen BT74 7BA

Tel: - 028 66 321805

www.fermanagh.gov.uk

Environmental Services

Larne Borough Council

Smiley Buildings

Victoria Road

Larne BT40 1RU

Tel: - 028 28 272313

e-mail: ehealth@larne.gov.uk

www.larne.gov.uk

Environmental Health Department

Limavady Borough Council

7 Connell Street

Limavady BT49 0HA

Tel: - 028 77 760302

www.limavady.gov.uk

Environmental Section

Lisburn City Council

Island Civic Centre

The Island

Lisburn BT27 4RL

Tel: - 028 92 509250

e-mail: ehealth@lisburn.gov.uk

www.lisburn.gov.uk

Environmental Health Department

Magherafelt District Council

50 Ballyronan Road

Magherafelt BT45 6EN

Tel: - 028 79 397979

e-mail: envhealth@magherafelt.gov.uk

www.magherafelt.gov.uk

Environmental Health Department

Moyle District Council

Sheskburn House

7 Mary Street

Ballycastle BT54 6QH

Tel: - 028 20 762225

e-mail: consumerservices@moyle-council.org
www.moyle-council.org

Environmental Health Department
Newry & Mourne District Council
Monaghan Row
Newry BT35 6DL
Tel: - 028 30 313100
e-mail: ehealth@newryandmourne.gov.uk
www.newryandmourne.gov.uk

Environmental Health Department
Newtownabbey Borough Council
Mossley Mill
Carnmoney Road North
Newtownabbey BT36 5QA
Tel: - 028 90 340000
www.newtownabbey.gov.uk

Environmental Services
North Down Borough Council
Town Hall
The Castle
Bangor BT20 4BT
Tel: - 028 91 278010
e-mail: env.services@northdown.gov.uk
www.northdown.gov.uk

Environmental Health Department
Strabane District Council
47 Derry Road
Strabane BT82 8DY
Tel: - 028 71 381311
e-mail: ehealth@strabanedc.com
www.strabanedc.com

Environmental Health Department
Omagh District Council
Lisnamallard House
Old Mountfield Road
OMAGH BT79 7EG
Tel: - 028 82 256202
www.omagh.gov.uk

PROFESSIONAL BODIES

Chartered Institute of Environmental Health Officers Northern Ireland
123 York Street
Belfast
Northern Ireland BT15 1AB

Tel: 028 9024 3884
e-mail: g.mcfarlane@cieh.org

Royal Institute of Public Health
28 Portland Place
London W1B 1DE
Tel: 020 7580 2731
e-mail: Contacts at <http://www.riph.org.uk>

Royal Society for the Promotion of Health
38A St George's Drive
London SW1V 4BH
Tel: 020 7630 0121
e-mail: rsph@rsph.org

Trading Standards Institute and Itsa Ltd
1 Sylvan Court
Sylvan Way
Southfields Business Park
Basildon
Essex SS15 6TH
Tel: 01268 582200
e-mail: institute@tsi.org.uk

CO-ORDINATING BODIES

Local Authorities Coordinators of Regulatory Services (LACORS)
Local Government House
Smith Square
London
SW1P 3HZ
Tel: 020 7665 3888
e-mail: info@lacors.gov.uk

Northern Ireland Local Government Association
Philip House
123 York Street
Belfast
BT15 1AB
Tel: 028 9024 9286
e-mail: Contacts
at <http://www.nilga.org>

INDUSTRY BODIES

British Retail Consortium
2nd Floor
21 Dartmouth Street

London, SW1H 9BP
Tel: 020 7854 8900
e-mail: www.brc.org.uk/ContactUs04.asp (use contact form)

Food and Drink Federation
6 Catherine Street
London WC2B 5JJ
Tel: 020 7836 2460
e-mail: generalenquiries@fdf.org.uk

NI Food and Drink Association
Belfast Mills
71-75 Percy Street
Belfast BT13 2HW
Tel: 028 90 241010
e-mail: mbell@nifda.co.uk

Ulster Farmers Union
475 Antrim Road
Belfast
BT13 2HW
Tel: 028 90 37 0222

British Hospitality Association
Queens House
55-56 Lincolns Inn Fields
London WC2A 3BH
Tel: 020 7404 7744
e-mail: bha@bha.org.uk

APPENDIX 2 - KEY PROVISIONS OF THE FOOD SAFETY (NORTHERN IRELAND) ORDER 1991

PART I: INTRODUCTORY

Article 1 states the title and commencement date.

Article 2 includes definitions of terms, including ' food has the meaning it has in Regulation (EC) 178/2002

Article 3 applies to food offered as prizes.

Article 4 sets out that food items commonly used for human consumption or in the manufacture of food that are found on some food premises will be presumed to be intended for sale, or for the manufacturing of food intended for sale, until the contrary is proved.

PART II: GENERAL PROVISIONS AS TO FOOD

Article 5 defines food which fails to comply with food safety requirements.

Article 6 describes the offence of rendering food injurious to health. It has been amended by the General Food Regulations (NI) 2004 so that the criteria by which it is decided whether food is injurious to health are now those in **Article 14 of Regulation (EC) 178/2002**.

Article 7 originally set out an offence of selling food that does not comply with the food safety requirements, but it has been amended substantially. This Article has largely been replaced by Regulation 4 of the General Food Regulations (NI) 2004. This makes it an offence not to comply with the food safety provisions of Article 14 of Regulation (EC) 178/2002.

Article 8 gives powers to inspect, seize and condemn food suspected of not complying with food safety requirements.

Article 9 provides for the issuing of improvement notices where it is suspected that legislation has been breached.

Article 10 provides for prohibition orders where there is a risk of injury to health.

Article 11 provides emergency prohibition powers where there is an imminent risk of injury to health.

Article 12 gives the Department power to make emergency control orders prohibiting commercial operations in relation to food when there is an imminent risk of such food causing injury to health.

Article 13 makes it an offence to sell food which is not of the 'nature or substance or quality' demanded by the purchaser.

Article 14 creates an offence for describing, advertising or presenting food which falsely describes the food or is likely to mislead as to the nature or substance or quality of the food.

Article 15 enables Departments to make regulations implementing a wide range of food safety and consumer protection measures. Examples might include food composition and the presence of residues in food sources (such as live animals), microbiological standards, food processes or treatments and hygienic conditions and practices.

Schedule 1 contains further provisions which may be included in regulations under **Article 15**.

Article 16 enables Departments to make regulations to fulfil European Community obligations.

Article 17 provides regulation-making powers for Departments to control novel foods and genetically modified food, and to cover special designations for milk.

Article 18 enables regulations to be made about the registration and licensing of food premises.

Article 19 gives a defence, where the commission of an offence is due to the act or default of another person and allows enforcement authorities to prosecute that other person.

Article 20 gives a defence if defendants can prove that they took all reasonable precautions and exercised all due diligence to avoid committing an offence. The defence varies for a defendant who manufactured or imported the food.

Article 21 contains a special defence for businesses who publish an advertisement in the course of business who had no reason to suspect that an offence was being committed.

Article 22 enables district councils to provide training courses in food hygiene for food handlers.

Article 23 allows district councils to provide facilities for cleansing shellfish.

Article 25 enables regulations and orders to include certain supplementary provisions.

PART III: ADMINISTRATION AND ENFORCEMENT

Article 26 establishes who enforces the provisions of the Order and regulations made under it and enables the Secretary of State or Food Standards Agency to take over particular functions in specific cases.

Article 27 to 30 deal with the appointment of public analysts, the provision by district councils of facilities for microbiological examination of food and the arrangements for procuring and analysing samples.

Article 31 deals with analysis of samples procured by authorised officer of the Department of Agriculture.

Article 32 provides powers to make regulations on sampling.

Article 33 sets out authorised officer's power to enter premises to enforce the Order and explains what they can do while on premises. It also makes unauthorised disclosure of information obtained when using such powers an offence.

Article 34 makes it an offence intentionally to obstruct an authorised officer or to provide false or misleading information.

Article 34 provides time limits for prosecutions.

Article 36 sets out the penalties for offences.

Articles 37 to 38 provide for appeals against decisions of an enforcement authority in the magistrates' court. There is also a further right of appeal to the Crown Court.

PART IV: MISCELLANEOUS AND SUPPLEMENTAL

Article 39 enables Departments to issue codes of practice to food authorities on the execution and enforcement of legislation, and to issue directions as to specific steps to be taken to comply with a code. Departments must consult interested organisations before issuing codes.

Article 40 allows the Department or the Agency to require food authorities to make reports and returns to the Department with respect to how they have exercised their functions under the Order.

Article 41 enables the Department to appoint another authority to act in place of a defaulting District Council.

Article 42 provides for the temporary continuation of a registration or a licence on the death of its holder.

Article 43 provides protection of the public analyst appointed by a district council, if he acted in good faith.

Article 44 enables the Department to make regulations to permit or require enforcement authorities to impose charges.

Article 45 specifies that expenses incurred by an authorised officer of an authority shall be met by that authority.

Article 47 specifies that Departments' powers to make regulations and orders shall be subject to Parliamentary scrutiny and requires Departments to consult interested organisations before making the majority of regulations and orders.

Article 48 sets certain requirements for the form and authentication of documents.

Article 49 provides for the Order to apply to Crown premises subject to special arrangements and certain exemptions.

Article 51 introduces Schedule 3 (transitional provisions, savings and repeals).