

A

B I L L

TO

Establish the Food Standards Agency and make provision as to its functions; to amend the law relating to food safety and other interests of consumers in relation to food; to enable a levy to be imposed in respect of certain food premises; to enable new provision to be made in relation to animal feeding stuffs; and for connected purposes. A.D. 1999.

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

5 *The Food Standards Agency*

1.—(1) There shall be a body to be called the Food Standards Agency or, in Welsh, yr Asiantaeth Safonau Bwyd (referred to in this Act as “the Agency”) for the purpose of carrying out the functions conferred on it by or under this Act. The Food Standards Agency.

10 (2) The main objective of the Agency in carrying out its functions is to protect public health from risks which may arise in connection with the consumption of food (including risks caused by the way in which it is produced or supplied) and otherwise to protect the interests of consumers in relation to food.

15 (3) The functions of the Agency are performed on behalf of the Crown.

2.—(1) The Agency shall consist of not less than ten and not more than fourteen members appointed by the appropriate authorities acting jointly. Appointment of members etc.

20 (2) In making appointments under this section the appropriate authorities shall secure that a variety of skills and experience is available among the members of the Agency (including experience in matters related to food safety or other interests of consumers in relation to food).

(3) In particular (but without prejudice to the generality of subsection (2)) the appropriate authorities shall appoint—

25 (a) at least one member with knowledge of matters connected with food safety or other interests of consumers in relation to food which is of particular relevance to Wales;

(b) at least two members with knowledge of such matters which is of particular relevance to Scotland; and

(c) at least one member with knowledge of such matters which is of particular relevance to Northern Ireland.

(4) Before appointing a person as a member of the Agency the appropriate authorities must consider whether he has any financial or other interest which in their opinion is likely to prejudice the exercise of his duties. 5

(5) The appropriate authorities acting jointly shall appoint one member of the Agency as chairman and another as deputy chairman.

(6) Schedule 1 (constitution etc. of the Agency) has effect. 10

Appointment of
chief executive
and directors.

3.—(1) A chief executive shall be appointed for the Agency.

(2) The chief executive shall be responsible for (among other things) securing that the activities of the Agency are carried out efficiently and effectively.

(3) The first appointment under subsection (1) shall be made by the appropriate authorities acting jointly; and subsequent appointments shall be made by the Agency, subject to the approval of each of those authorities. 15

(4) Directors shall be appointed for Wales, for Scotland and for Northern Ireland, each of whom shall be responsible under the chief executive for (among other things) securing that the activities of the Agency in Wales, Scotland or Northern Ireland (as the case may be) are carried out efficiently and effectively. 20

(5) The first appointment under subsection (4) for Wales, for Scotland and for Northern Ireland shall be made by the appropriate authority for that part of the United Kingdom; and subsequent appointments shall be made by the Agency, subject to the approval of that authority. 25

(6) The chief executive and the directors appointed under subsection (4) shall hold and vacate office in accordance with the terms of their appointments.

Advisory
committees for
Wales, Scotland
and Northern
Ireland.

4.—(1) There shall be established an advisory committee for Wales, an advisory committee for Scotland and an advisory committee for Northern Ireland for the purpose of giving advice or information to the Agency about matters connected with its functions (including in particular matters affecting or otherwise relating to Wales, Scotland or Northern Ireland, as the case may be). 35

(2) A committee established under this section shall consist of—

(a) a chairman appointed by the appropriate authority from among the members of the Agency;

(b) such other persons as may be appointed by the appropriate authority, after consulting the Agency. 40

(3) No more than one member appointed under subsection (2)(b) may be a member of the Agency.

(4) The Agency may supplement the terms of reference of a committee established under this section, with the approval of the appropriate authority. 45

(5) In this section “appropriate authority”, in relation to a committee established under this section, means the appropriate authority for the part of the United Kingdom for which the committee is established.

5 5.—(1) The Secretary of State may decide, after consulting the Agency, that an advisory committee for, or for any region of, England should be established for a purpose corresponding to the purpose of a committee established under section 4. Advisory committees for England.

(2) A committee established under this section shall consist of a chairman and such other persons as may be appointed by the Secretary of State, after consulting the Agency.

(3) No more than two persons appointed under subsection (2) may be members of the Agency.

(4) The Agency may supplement the terms of reference of a committee established under this section, with the approval of the Secretary of State.

15 6.—(1) The Agency may, after consulting the appropriate authorities, establish other advisory committees for the purpose of giving advice or information to the Agency about such matters connected with its functions as it may determine. Other advisory committees.

20 (2) The members of a committee established under this section shall be appointed by the Agency, after consulting the appropriate authorities, and may include members of the Agency.

7.—(1) The Agency may pay to the members of an advisory committee established under section 4, 5 or 6 such remuneration or allowances in respect of expenses (or both) as the Agency may determine. Advisory committees: supplementary.

25 (2) Any expenditure incurred by such a committee shall be defrayed by the Agency.

8.—(1) The Agency shall prepare a report on its activities during each financial year. Annual and other reports.

30 (2) The Agency shall, as soon as possible after the end of each financial year, lay its report for that year before Parliament, the National Assembly for Wales, the Scottish Parliament and the Northern Ireland Assembly.

(3) The Agency may from time to time lay other reports before any of those bodies.

The functions of the Agency

35 9.—(1) The Agency has the function of— Development of food policy and provision of advice, etc. to public authorities.

(a) developing policies (or assisting in the development by any public authority of policies) relating to food safety or other interests of consumers in relation to food; and

(b) providing advice, information or assistance to any public authority.

40 (2) A Minister of the Crown or government department, the National Assembly for Wales, any of the Scottish Ministers or a Northern Ireland

Department may request the Agency to exercise its powers under this section in relation to any matter; and it shall be the duty of the Agency, so far as is reasonably practicable, to comply with any such request.

Provision of advice, information and assistance to other persons.

10.—(1) The Agency has the function of—

- (a) providing advice and information to the general public (or any section of the public) in respect of matters connected with food safety or other interests of consumers in relation to food; 5
- (b) providing advice, information or assistance in respect of such matters to any person who is not a public authority.

(2) The function under subsection (1)(a) shall be carried out (without prejudice to any other relevant objectives) with a view to ensuring that members of the public are kept adequately informed about and advised in respect of matters which the Agency considers significantly affect their capacity to make informed decisions about food. 10

Publication by the Agency of information and advice.

11.—(1) The Agency may, subject to subsections (2) and (3), arrange for advice or information given under section 9 or 10 (including any provided in pursuance of section 9(2)) to be published in such manner as it thinks fit. 15

(2) In deciding whether to publish any information under this section, the Agency—

- (a) must take account of any considerations of confidentiality attaching to that information; but 20
- (b) may publish that information (or any of it) if it appears to the Agency to be in the public interest to do so.

(3) The Secretary of State may for the purpose of safeguarding national security direct the Agency that any advice or information specified, or of a description specified, in the direction shall not be published under this section, whether permanently or for a specified period. 25

Acquisition and review of information.

12.—(1) The Agency has the function of obtaining, compiling and keeping under review information about matters connected with food safety and other interests of consumers in relation to food. 30

(2) That function includes (among other things)—

- (a) monitoring developments in science, technology and other fields of knowledge (including dietary behaviour, diseases and the state of the environment) relating to those matters;
- (b) carrying out, commissioning or supporting (whether by financial means or otherwise) research on those matters. 35

(3) That function shall (without prejudice to any other relevant objectives) be carried out with a view to ensuring that the Agency has sufficient information to enable it to take informed decisions and to carry out its other functions effectively. 40

Power to carry out observations.

13.—(1) For the purpose of carrying out its function under section 12 the Agency may carry out observations (or arrange with other persons for observations to be carried out on its behalf) with a view to obtaining

information about any aspect of the production or supply of food or food sources, including in particular information about—

- (a) food premises, food businesses or commercial operations being carried out with respect to food, food sources or contact materials;
- 5 (b) agricultural premises, agricultural businesses or agricultural activities.

(2) The Agency may authorise any individual (whether a member of its staff or otherwise) to exercise the powers specified in subsection (4) for the purpose of carrying out observations under this section.

- 10 (3) An authorisation under subsection (2) shall be in writing and may be given subject to any limitations or conditions specified in the authorisation.

(4) An authorised person may, if it appears to him necessary to do so for the purpose of carrying out observations to which his authority relates—

- (a) enter any premises at any reasonable hour;
- 15 (b) take samples of any articles or substances found on any premises;
- (c) inspect and copy any records found on any premises which relate to a business which is the subject of the observations (and, if they are kept in computerised form, require them to be made available in a legible form);
- 20 (d) require any person carrying on such a business to provide him with such facilities, such records or information and such other assistance as he may reasonably request;

but in this subsection “premises” does not include a private dwelling-house.

- 25 (5) An authorised person shall, if so required, produce his authority before exercising any of the powers mentioned in subsection (4).

(6) The references in subsection (4)(c) and (d) to records include any records which—

- (a) relate to the health of any person who is or has been employed in the business concerned, and
- 30 (b) were created for the purpose of assessing, or are kept for the purpose of recording, matters affecting his suitability for working in the production or supply of food or food sources (including any risks to public health which may arise if he comes into contact with any food or food source).

- 35 (7) The Agency may publish in such manner as it considers appropriate any information obtained from observations carried out by it or on its behalf (whether as a result of the exercise of any power under subsection (4) or otherwise).

40 (8) In deciding whether to publish under subsection (7) information relating to any individual or any business, the Agency—

- (a) must take account of any considerations of confidentiality attaching to that information; but
- (b) may publish that information (or any of it) if it appears to the Agency to be in the public interest to do so.

45 (9) A person who—

- (a) intentionally obstructs a person exercising powers under subsection (4)(a), (b) or (c);

(b) fails without reasonable excuse to comply with any requirement imposed under subsection (4)(d); or

(c) in purported compliance with such a requirement furnishes information which he knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) In this section—

1947 c. 48. “agricultural activity” has the same meaning as in the Agriculture Act 1947;

1988 c. 16. “agricultural business” has the same meaning as in the Farm Land and Rural Development Act 1988;

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

“authorised person” means a person authorised under subsection (2).

Monitoring of enforcement action.

14.—(1) The Agency has the function of monitoring the performance of enforcement authorities in enforcing the following legislation (“relevant legislation”), that is to say—

1970 c. 40. (a) the provisions of Part IV of the Agriculture Act 1970 and regulations made under that Part of that Act, so far as relating to matters connected with animal feeding stuffs;

1990 c. 16. (b) the provisions of the Food Safety Act 1990 (in this Act referred to as “the 1990 Act”) and regulations or orders made under it; and

S.I. 1991/762 (N.I.7) (c) the provisions of the Food Safety (Northern Ireland) Order 1991 and regulations or orders made under it.

(2) That function includes, in particular, setting standards of performance (whether for enforcement authorities generally or for particular authorities) in relation to the enforcement of any relevant legislation.

(3) The Agency may publish any information it considers appropriate in relation to the performance of enforcement authorities, or particular authorities, in enforcing relevant legislation.

(4) In deciding whether to publish any information under subsection (3) relating to any person other than an enforcement authority or any member, officer or employee of such an authority (in his capacity as such), the Agency—

(a) shall take account of any considerations of confidentiality attaching to that information; but

(b) may publish that information (or any of it) if it appears to the Agency to be in the public interest to do so.

(5) The Agency shall include in each annual report under section 8 a report on its performance during the year in enforcing any relevant legislation for which it is the enforcement authority.

(6) The Agency may make a report to any other enforcement authority on their performance in enforcing any relevant legislation; and such a report may include guidance as to action which the Agency considers would improve that performance.

(7) The Agency may direct an authority to which such a report has been made—

- (a) to arrange for the publication in such manner as may be specified in the direction of, or of specified information relating to, the report;
5 and
- (b) within such period as may be so specified to notify the Agency of what action they have taken or propose to take in response to the report.

(8) In this section—

10 “enforcement” in relation to any relevant legislation includes execution; and

“enforcement authority” means—

15 (a) in the case of provisions of Part IV of the Agriculture Act 1970 (or regulations made under it), an authority mentioned in section 67 of that Act; 1970 c. 40.

20 (b) in the case of provisions of the 1990 Act or regulations or orders made under it, the authority by whom they are to be enforced (including a Minister of the Crown, the National Assembly for Wales, a Scottish Minister or the Agency itself if, by virtue of section 6(3) or (4) of the 1990 Act, he or it is the enforcement authority in relation to those provisions);

25 (c) in the case of provisions of the Food Safety (Northern Ireland) Order 1991 and regulations or orders made under it, the authority by whom they are to be enforced (including a Northern Ireland Department or the Agency itself if, by virtue of the Order, it is the enforcement authority in relation to those provisions). S.I. 1991/762 (N.I.7)

30 (9) Any reference in this section (however expressed) to the performance of an enforcement authority in enforcing any relevant legislation includes a reference to the capacity of that authority to enforce it.

15.—(1) For the purpose of carrying out its function under section 14 in relation to any enforcement authority the Agency may require a person mentioned in subsection (2)—

- 35 (a) to provide the Agency with any information which it has reasonable cause to believe that person is able to give, or
- (b) to make available to the Agency for inspection any records which it has reasonable cause to believe are held by that person or otherwise within his control (and, if they are kept in computerised form, to make them available in a legible form).

40 (2) A requirement under subsection (1) may be imposed on—

- (a) the enforcement authority or any member, officer or employee of the authority, or
- 45 (b) a person subject to any duty under relevant legislation (being a duty enforceable by an enforcement authority) or any officer or employee of such a person.

(3) The Agency may copy any records made available to it in pursuance of a requirement under subsection (1)(b).

Monitoring of enforcement action: specific powers.

(4) For the purpose of carrying out its function under section 14 in relation to any enforcement authority, the Agency may authorise any individual (whether a member of the Agency's staff or otherwise)—

- (a) to enter any premises mentioned in subsection (5) at any reasonable hour in order to inspect the premises or anything which may be found on them; 5
- (b) to take samples of any articles or substances found on such premises;
- (c) to inspect and copy any records found on such premises (and, if they are kept in computerised form, to require them to be made available in a legible form); 10
- (d) to require any person present on such premises to provide him with such facilities, such records or information and such other assistance as he may reasonably request.

(5) The premises which may be entered by a person so authorised are— 15

- (a) any premises occupied by the enforcement authority;
- (b) any laboratory or similar premises at which work related to the enforcement of any relevant legislation has been carried out for the enforcement authority; and
- (c) any other premises (not being a private dwelling-house) which the authorised person has reasonable cause to believe are premises in respect of which the enforcement powers of the enforcement authority are (or have been) exercisable. 20

(6) The power to enter premises conferred on a person so authorised includes power to take with him any other person he may consider appropriate. 25

(7) An authorisation under this section shall be in writing and may be given subject to such limitations or conditions as may be specified in the authorisation.

(8) A person so authorised shall, if so required, produce his authority before exercising any of the powers mentioned in subsection (4). 30

(9) A person who—

- (a) fails without reasonable excuse to comply with any requirement imposed under subsection (1)(a) or (b) or (4)(d);
- (b) intentionally obstructs a person exercising powers under subsection (4)(a), (b) or (c); or 35
- (c) in purported compliance with a requirement imposed under subsection (1)(a) or (4)(d) furnishes information which he knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular; 40

is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(10) Where—

- (a) the enforcement authority in relation to any provisions of the 1990 Act or orders or regulations made under it is (by virtue of section 6(3) or (4) of that Act) a Minister of the Crown, the National Assembly for Wales, a Scottish Minister or the Agency, or 45

(b) the enforcement authority in relation to any provisions of the Food Safety (Northern Ireland) Order 1991 or regulations or orders made under it is a Northern Ireland Department or the Agency, this section applies in relation to the monitoring of the performance of that authority with the omission of subsection (5)(a).

S.I. 1991/762 (N.I. 7).

(11) Expressions used in this section and in section 14 have the same meaning as in that section.

16.—(1) An agreement may be made between the Secretary of State and the Agency authorising the Agency to exercise on behalf of the Secretary of State the power to make orders under—

Delegation of powers to make emergency orders.

(a) section 1(1) of the Food and Environment Protection Act 1985 (emergency orders); and

1985 c. 48.

(b) section 13(1) of the 1990 Act (emergency control orders).

(2) The authority given by an agreement is subject to any limitations and conditions provided for in the agreement.

(3) Where by virtue of an agreement the Agency is authorised to exercise a power, anything done or omitted to be done by the Agency in the exercise or purported exercise of the power shall be treated as done or omitted by the Secretary of State.

(4) An agreement does not prevent the Secretary of State exercising any power.

(5) This section applies with the necessary modifications to any power mentioned in subsection (1) so far as it is exercisable by the National Assembly for Wales, the Scottish Ministers or a Northern Ireland Department as it applies to a power exercisable by the Secretary of State.

17. Schedule 2 (which contains provisions conferring functions under certain enactments on the Agency) has effect.

Functions of the Agency under other Acts.

General provisions relating to the functions of the Agency

18.—(1) The Agency shall prepare and publish a statement of general objectives it intends to pursue, and general practices it intends to adopt, in carrying out its functions.

Statement of general objectives and practices.

(2) The statement shall include the following among the Agency's general objectives, namely—

(a) securing that its activities are the subject of consultation with, or with representatives of, those affected and, where appropriate, with members of the public;

(b) promoting links with any of the following authorities with responsibilities affecting food safety or the interests of consumers in relation to food, namely—

- (i) government departments;
- (ii) the National Assembly for Wales (and its staff) and Assembly Secretaries, the Scottish Administration and Northern Ireland Departments; and

(iii) other public authorities,

with a view to securing that the Agency is consulted informally from time to time about the general manner in which any such responsibilities are discharged;

(c) securing that records of its decisions, and the information on which they are based, are kept and made available with a view to enabling members of the public to make informed judgments about the way in which it is carrying out its functions, 5

and any other objectives (which may include more specific objectives relating to anything mentioned in paragraphs (a) to (c)) which are notified to the Agency by the appropriate authorities acting jointly. 10

(3) Nothing in subsection (2) prevents the inclusion in the statement of more specific objectives relating to anything mentioned in that subsection.

(4) The statement shall be submitted in draft to the appropriate authorities for their approval before it is published. 15

(5) The appropriate authorities acting jointly may approve the draft statement submitted to them with or without modifications (but they must consult the Agency before making any modifications).

(6) The Agency shall publish the approved statement (including any modifications made under subsection (5)) in such manner as the appropriate authorities acting jointly may approve. 20

(7) The first statement under this section shall be submitted to the appropriate authorities within the period of three months beginning with the date of the first meeting of the Agency.

(8) The Agency may revise its current statement under this section; and this section applies to a revised statement as it applies to the first statement. 25

Consideration of objectives, risks, costs and benefits, etc.

19.—(1) In carrying out its functions the Agency shall pay due regard to the statement of objectives and practices under section 18.

(2) The Agency, in considering whether or not to exercise any power, or the manner in which to exercise any power, shall take into account (among other things)— 30

(a) the nature and magnitude of any risks to public health, or other risks, which are relevant to the decision (including any uncertainty as to the adequacy or reliability of the available information);

(b) the likely costs and benefits of the exercise or non-exercise of the power or its exercise in any manner which the Agency is considering; and 35

(c) any relevant advice or information given to it by an advisory committee (whether or not given at the Agency's request).

(3) The duty under subsection (2)— 40

(a) does not apply to the extent that it is unreasonable or impracticable for it to do so in view of the nature or purpose of the power or in the circumstances of the particular case; and

(b) does not affect the obligation of the Agency to discharge any other duties imposed on it. 45