# Control of Food Premises (Scotland) Act 1977

## 1977 CHAPTER 28

An Act to prohibit as respects Scotland the sale etc. of food in circumstances where there is a likely danger to health.
[22nd July 1977]

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:—

Closure of food premises, etc. dangerous to health.
1956 c. 30.

**1.**—(1) Where a person is convicted of an offence under regulations made under section 13 of the Food and Drugs (Scotland) Act 1956, and the offence includes—

(*a*) the carrying on of a food business at any insanitary premises or at any premises the condition, situation or construction of which is such that food is exposed to the risk of contamination; or

(*b*) the carrying on of a food business on, at or from a stall, vehicle or place which is insanitary, or which is so situated or constructed, or is in such a condition, that the food is exposed to the risk of contamination,

then, if the sheriff is satisfied that—

(i) food continues or is likely to continue to be prepared, stored, sold or offered or exposed for sale at those premises or on, at or from that stall, vehicle or place or transported on that vehicle; and

(ii) the state or situation of the premises, stall, vehicle or place continues or is likely to continue to be such as gave rise to the said offence; and

(iii) the carrying on of a food business at those premises or on, at or from that stall, vehicle or place is likely to be dangerous to health,

he may, on the application of the procurator fiscal and subject to subsection (2) below, by order (in this Act referred to as "a closure order") prohibit the carrying on of a food business at those premises or on, at or from that stall, vehicle or place and specify such measures as he considers necessary to remove any danger to health; and the closure order shall continue in effect until a certificate under subsection (4) below has been issued in respect of that order.

(2) A closure order shall not be made unless the procurator fiscal, not less than seven days before the date fixed for the first calling of the case in respect of the said offence, has given to—

(*a*) the accused, and

(*b*) if he is not the accused, the owner of the premises, stall, vehicle or place (unless the procurator fiscal is unable after reasonable inquiry to ascertain his identity),

written notice of his intention to apply for the order.

(3) A notice under subsection (2) above shall specify the measures which, in the opinion of the local authority, should be taken to remove any danger to health.

(4) Any person who wishes to carry on a food business at any premises or on, at or from any stall, vehicle or place with respect to which a closure order is in force may make application to the local authority who, if satisfied that the measures specified by the closure order have been carried out, shall as soon as practicable and in any event within fourteen days issue to the applicant a certificate to that effect.

Interim order for closing food premises, etc. where imminent risk of danger to health.

**2.**—(1) Subject to subsection (2) below, where a complaint is or has been served in relation to an offence described in section 1(1) of this Act, and application is made by the procurator fiscal for an order under this section, the sheriff may, if satisfied—

(*a*) by evidence on oath given by two officers of the local authority; and

(*b*) after hearing any evidence submitted by the accused and, if he is not the accused, the owner of the premises, stall, vehicle or place,

that the use of the premises, stall, vehicle or place for the carrying on of a food business involves imminent risk of danger to health, make an order (in this Act referred to as "an interim order") prohibiting, either absolutely or subject to conditions, the use of those premises or that stall, vehicle or place for that purpose; and subject to subsection (5) below, the interim order

shall continue in effect until the determination of the proceedings relating to the said offence or the issue of a certificate by the local authority under subsection (4) below, whichever is the earlier.

(2) An interim order shall not be made unless the procurator fiscal, not less than seven days before the date fixed for the first calling of the case in respect of the said offence, has given to—

(*a*) the accused, and

(*b*) if he is not the accused, the owner of the premises, stall, vehicle or place (unless the procurator fiscal is unable after reasonable inquiry to ascertain his identity),

written notice of his intention to apply both for the interim order and a closure order.

(3) The procurator fiscal shall in any notice under subsection (2) above specify the measures which, in the opinion of the local authority, should be taken to remove any danger to health.

(4) Any person who wishes to carry on a food business at any premises or on, at or from any stall, vehicle or place, with respect to which an interim order is in force, may make application to the local authority who, if satisfied that there is no longer any risk of danger to health, shall as soon as practicable and in any event within fourteen days issue a certificate to that effect.

(5) Where an interim order has not already ceased to have effect by virtue of subsection (1) above and no trial has commenced in respect of the offence by the date occurring four weeks after the making of that order, the order shall cease to have effect on that date.

Right of appeal.

**3.**—(1) Where an application for a closure order—

(*a*) is refused, the procurator fiscal may appeal to the High Court of Justiciary;

(*b*) is granted, any person to whom notice of the application was given under section 1(2) of this Act may appeal as aforesaid.

(2) Where an application for an interim order—

(*a*) is refused, the procurator fiscal may appeal to the sheriff principal;

(*b*) is granted, any person to whom notice of the application was given under section 2(2) of this Act may appeal to the sheriff principal, and any appeal under this subsection shall be by way of summary application.

(3) Where a person applies for a certificate under section 1(4) or 2(4) of this Act, and the local authority refuse or fail to issue it, the applicant may appeal to the sheriff who may, if satisfied that it is proper to do so, direct the authority to issue such certificate forthwith.

1956 c. 30.

(4) Section 50 of the Food and Drugs (Scotland) Act 1956 (appeals to sheriff) shall apply in relation to appeals under subsection (3) above as it applies in relation to appeals under that Act.

Penalties.

**4.**—(1) A person who contravenes a closure order or an interim order shall be liable on summary conviction to a fine not exceeding £400.

(2) Sections 41(6) (offence by body corporate committed with consent etc. of director etc.) and 45 (contravention due to default of some other person) of the Food and Drugs (Scotland) Act 1956 shall apply in relation to proceedings under this section as they apply in relation to proceedings under that Act.

Service of notices.

**5.** Any notice required to be given under this Act to any person may be given either by—

(*a*) delivering it personally to that person ; or

(*b*) leaving it for him at his dwelling-house or place of business with some person resident or employed therein ; or

(*c*) sending it by post in a registered envelope or through the recorded delivery service addressed to him at his dwelling-house or place of business ; or

(*d*) where the said person is an incorporated company or body, delivering it to the secretary or clerk of the company or body at their registered or principal office, or sending it by post in a registered envelope or through the recorded delivery service addressed to the secretary or clerk of the company or body at that office ; or

(*e*) where the said person is a body of trustees, leaving it with any one of the trustees who is resident in Scotland or with their known solicitor in Scotland.

Interpretation.

**6.** Expressions used in this Act and in the regulations mentioned in section 1(1) of this Act shall, unless the context otherwise requires, have the same meaning in this Act as in those regulations.

Power to make corresponding provision in relation to ships.
1956 c. 30.

**7.**—(1) The following subsection applies to any offence under regulations made under section 13 of the Food and Drugs (Scotland) Act 1956 which includes the carrying on of a food business in any insanitary ship or in any ship the condition, situation or construction of which is such that food is exposed to the risk of contamination.

(2) In relation to an offence to which this subsection applies, the Secretary of State may make regulations containing provisions corresponding, with such additions, omissions or other modifications as he thinks fit, to the provisions of sections 1 to 6 of this Act.

(3) The penalty provided for by any provision in the regulations corresponding to section 4(1) of this Act shall be the same as in that subsection.

(4) The power to make regulations under this section shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

Effect of Order in Council under section 52 of the Food and Drugs (Scotland) Act 1956 c. 30.

**8.** For the avoidance of doubt, the making of an Order in Council under section 52 of the Food and Drugs (Scotland) Act 1956, applying regulations made under section 13 of that Act to the Crown shall not have the effect of applying the provisions of this Act to the Crown.

Short title, commencement and extent.

**9.**—(1) This Act may be cited as the Control of Food Premises (Scotland) Act 1977.

(2) This Act shall come into force on such day as the Secretary of State may by order made by statutory instrument appoint.

(3) This Act extends to Scotland only.