

GUERNSEY STATUTORY INSTRUMENT

1995 No. 3

The Food and Drugs (Food Hygiene) (Amendment) Order, 1995

Made 24th February 1995

Laid before the States ...

Coming into operation 1st August 1995

THE STATES BOARD OF HEALTH, in exercise of the powers conferred on it by sections 13 and 47 of the Food and Drugs (Guernsey) Law, 1970, as amended (a), and of all other powers enabling it in that behalf, hereby orders:-

Amendment to the principal Order

1. The Food and Drugs (Food Hygiene) Order, 1976 (b) is hereby amended -

(a) by deleting the definition "food business" from Section 1 (1) and substituting the following

" "food business" means any undertaking, whether carried on for profit or not and whether public or private, carrying out any or all of the following operations, namely, preparation, processing, manufacture, packaging, storage, transportation, distribution, handling or offering for sale or supply, of food;"

(b) by deleting Section 1 (2) (b) thereof.

(c) by deleting Section 6, (1) (b) thereof and substituting the following paragraph -

"(b) prevent, so far as is reasonably practicable, the entry of birds, and any risk of infestation of rats, mice, insects or other pests."

(d) by deleting section 14 thereof and substituting the following section -

" 14. (1) The provisions of this section shall apply to all food consisting of meat, fish, gravy or imitation cream, or prepared from or containing any of these substances or any egg or milk,

but shall not apply to -

(a) Ordres en Conseil, Vol. XXII, p. 412; Vol. XXV, p. 378; Vol. XXIX, p. 329.

(b) S.I. No. 13 of 1976

- (i) bread, biscuits, cake or pastry by reason only of the use of egg or milk as an ingredient thereof introduced prior to baking;
- (ii) chocolate or sugar confectionery;
- (iii) ice-cream to which the provisions of any Ordinance or Order with respect to heat treatment of ice-cream in force under section 4 of the Law apply;
- (iv) food canned, bottled or otherwise preserved in an hermetically sealed container of metal, glass or other impermeable material, so long as the container remains effectively closed;
- (v) butter, margarine, lard, shortening, cooking fats or beef suet;
- (vi) uncooked bacon, uncooked ham, dry foods;
- (vii) milk (doorstep deliveries only);
- (viii) bakery products with imitation cream which are not liable to support bacterial growth;
- (ix) smoked or cured fish (mail order only);
- (x) dried or salted fish;
- (xi) any unskinned rabbits or hares or unplucked game or poultry; or
- (xii) food whilst being supplied for immediate consumption on catering premises.

(2) Subject to subsection (3) -

(a) any food to which this section applies which is stored or which is in any food premises, market or stall, or which is being transported thereto, must be kept at or below the specified temperature or, where it is intended to be supplied hot, must be kept at a temperature of, or above, 63 degrees Celsius.

(b) where, upon completion of manufacture, any food to which this section applies is above the specified temperature, or below 63 degrees Celsius, as the case may be, it shall be brought to the appropriate temperature without any avoidable delay.

(3) Where food has been cooked or partly cooked on any food premises, or market in or from which there is carried on any food business or stall -

(a) where it is required for immediate consumption it shall be kept at a temperature of not less than 63 degrees Celsius until it is served for immediate consumption; or

(b) where it is not required for immediate consumption, or its temperature has been permitted to fall below 63 degrees Celsius, it shall immediately be cooled, under hygienic conditions and as quickly as reasonably practicable, to or below the specified temperature and thereafter kept at that temperature until required for serving or further cooking or reheating for service.

(4) In any proceedings for an offence under this section, it shall be a defence for a person charged to prove that -

(a) the food -

(i) was for service or on display for sale;

(ii) had not previously been kept for service or on display for sale at a temperature above the specified temperature or, in appropriate circumstances, the recommended temperature; and

(iii) had been kept for service or on display for sale for a period of less than two hours, or

(b) the food -

(i) was being transferred -

(aa) to a vehicle used for the purposes of a food business from, or

(bb) from a vehicle used for the purposes of a food business to,

premises (which includes vehicles) at which the food was or was going to be kept either at or below the specified temperature or, in appropriate circumstances, the recommended temperature; or

(ii) was kept at a temperature above the specified temperature or, in appropriate circumstances, the recommended temperature for an unavoidable reason, such as -

(aa) to accommodate the practicalities of handling during and after processing or preparation,

(bb) the defrosting of equipment, or

(cc) temporary breakdown of equipment,

and was kept at a temperature above the specified temperature or, in appropriate circumstances, the recommended temperature for a limited period only and that period was consistent with food safety.

(c) (i) a well-founded scientific assessment of the safety of the food at temperatures below 63 degrees Celsius has averred that there is no risk

to health if, after cooking or reheating, the food is held for service or on display for sale -

(aa) at a temperature or temperatures below 63 degrees Celsius, and

(bb) for period not exceeding a specified period of time; and

(ii) at the time of the commission of the alleged offence, the food was held in a manner which was consistent with the contents of the averment referred to in subsection (c) (i).

(5)(a) In any proceedings for an offence under this section, it shall be a defence for a person charged to prove that -

(i) the food business responsible for manufacturing, preparing or processing the food (for the purpose of this section called "the varier") has recommended that it is kept -

(aa) at or below a given temperature between the specified temperature and ambient temperatures, and

(bb) for a period not exceeding a specified shelf life:

(ii) that recommendation has, unless he is himself the varier, been communicated to him either by means of a label on the packaging of the food or by means of some other appropriate form of written instruction;

(iii) the food was not kept by him at a temperature or temperatures above the recommended temperature; and

(iv) at the time of the commission of the alleged offence, the specified shelf life had not been exceeded.

(b) A food business responsible for manufacturing preparing or processing food shall not recommend that any food is kept -

(i) at a given temperature between the specified temperature and ambient temperatures; and

(ii) for a period not exceeding a specified shelf life,

unless that recommendation is supported by a well-founded scientific assessment of the safety of the food at the given temperature.

(6) For the purposes of this section, the presence of a scientific assessment of the safety of any food in a guide to good hygiene practice which has been -

(a) forwarded by the Secretary of State of the United Kingdom Government to the Commission pursuant to Article 5.5 of the Directive, unless the

Secretary of State has announced that the guide no longer complies with Article 3 of the Directive; or

- (b) developed in accordance with Articles 5.6 and 7 of the Directive and published in accordance with Article 5.8 of the Directive,

shall, until the contrary is proved, be considered sufficient evidence that the scientific assessment in question is well founded. "

(7) In this section the expression -

"the Directive" means Council Directive 93/43/EEC of 14 June 1993 on the hygiene of foodstuffs;

"recommended temperature" means a given temperature which has been recommended in accordance with subsections (4) and (5);

"risk to health" has the same meaning as in paragraph 4 of Chapter IX of the Annex to the Directive;

"shelf life" means -

(a) in relation to food with respect to which an indication of minimum durability is required in accordance with Section 4 of the Food and Drugs (Labelling of Food) Order, 1995, the period up until the date to be indicated;

(b) in relation to food with respect to which a "use by" date is required in accordance with Section 5 of the Food and Drugs (Labelling of Food) Order, 1995, the period up until that date;

(c) in relation to food which does not need to bear an indication of minimum durability or a "use by" date, the period for which the food can be expected to retain its specific properties, if it is kept in a manner which is consistent with food safety;

"the specified temperature" means 8 degrees Celsius:

"egg" includes whole egg and albumen whether or not the egg, yolk or albumen is dried, frozen or otherwise preserved, and

"milk" includes cream, condensed milk, dried milk and separated or skimmed milk. "

- (f) by deleting the words "and antiseptics" from Section 20 thereof and inserting the word "and" immediately after the word "bandages".

(g) by deleting Section 34 and substituting the following Section -

" (i) Any person who fails to comply with the requirements of this Order, or causes or permits another so to fail to comply, shall be guilty of an offence and liable upon summary conviction to a fine not exceeding level 3 on the uniform scale or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment.

(ii) If, after a person has been convicted under subparagraph (i), he does not as soon as practicable do everything in his power to comply with the provisions of this Section, he shall be guilty of a further offence and shall be liable on summary conviction to a fine not exceeding level 1 on the uniform scale for each day following his first conviction on which any of the requirements of this Order remain unfulfilled."

Extent

2. This Order shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Citation

3. This Order may be cited as the Food and Drugs (Food Hygiene) (Amendment) Order, 1995

Commencement

4. This Order shall come into force on the 1st day of August, 1995

Dated this 24th day of February, nineteen hundred and ninety-five.



S. M. PLANT

President of the States Board of Health
for and on behalf of the Board.

EXPLANATORY NOTE

(THIS NOTE DOES NOT FORM PART OF THE ORDER)

The main provision of The Food and Drugs (Food Hygiene) (Amendment) Order, 1995 amends the Food and Drugs (Food Hygiene) Order, 1976 by replacing Section 14 (Temperature at which certain foods are to be kept), and contains the new chill control requirements: food which needs to be kept chilled because it is likely to support the growth of pathogenic micro-organisms or the formation of toxins must be kept at or below a specified temperature.

There are certain exemptions and a provision which allows for the variation of the specified temperature in appropriate circumstances. Any such variation must, however, be based on a well-founded scientific assessment of the safety of the food at the new temperature.

There are also three minor provisions included in the Order -

- (i) milk is now included as a food;
- (ii) food businesses will no longer need to carry antiseptic in the First Aid Kit;
- (iii) food businesses will need to take all practicable steps to prevent the entry of birds into food rooms, in addition to the existing requirement to prevent infestation by rats, mice, insects or other pests.