



## **Enforcement Officer Guide.** **Food Information Law-Seizure and Detention Powers.**

### **Background**

Section 33 in Part 2 of the 2015 Act inserts new provisions on food information into the Food Safety Act 1990, with respect to seizure and detention of food in contravention of food information law. These new provisions were introduced as part of the recommendations of the Scudamore inquiry into the fraudulent substitution of horsemeat.

The purpose of the new provisions, is to give powers to enforcement officer to seize food in order to have it dealt with by a sheriff, where significant contraventions of food information law is found, and to allow food to be detained pending further examination where suspicions of non-compliance require to be verified, through analysis if necessary, prior to the authorised officer making the determination that food information law has been contravened.

Section 15A, defines the meaning of “food information” for the new provisions as having the same meaning as it has in the Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers. and specifies that food information law means any enactment relating to food information specified by Scottish Ministers by regulation.

### **Scope of the new powers.**

The detention and seizure powers should only be applied where serious breaches of food information law are found. It is anticipated they will be used for breaches of the European Food Information to Consumers Regulation No 1169/2011 (FIC) and related legislation which specifies the nature and substance of the food described in these regulations.

Examples of scenarios when the new powers could be applied include serious breaches of food information relating to substitution, authenticity, adulteration and misleading descriptions.

## **Application of Seizure and Detention Powers.**

As is the case with the existing seizure and detention powers under Section 9 of the Food Safety Act, careful consideration should be given before initiating detention and seizure provisions, since there are explicit protocols specified in the Act, which must be adhered to.

There are no specific appeals against the application of these powers for the affected food businesses, such as exist for the service of improvement notices. This is because representations to the sheriff are explicitly provided for in the Act itself.

Once food is seized, the determination as to what ultimately happens to the food must be made by the sheriff. The authorised officer cannot release seized food, even if assurances regarding rectifying non-compliances are given. Similarly, once detained the authorised officer must either fully withdraw the notice if no contraventions are confirmed or remove it to have it dealt with by the sheriff. Therefore the detention provisions cannot be used as a mechanism to obtain compliance by informal means and in the first instance traditional enforcement approaches to achieve compliance for minor breaches should be used.

### **The formal process is detailed below:**

Where it appears to an officer that food information law is being, or has been, contravened, the officer may:

- a) give notice that the food is not to be used for human consumption and is not to be removed (except to some place specified in the notice) ( Model notice 1)
- b) seize the food and remove it in order to have it dealt with by the sheriff (Model notification form 2).

or

- c) Issue a withdrawal notice (Model notice 3)

### **Use of Detention Notices.**

The purpose of the detention notice is to allow authorised officers to carry out further necessary investigations, including examination of foods, where serious contraventions are suspected, but further investigation is required to confirm this. Examples include circumstances where meat or fish is suspected to have been adulterated or substituted for financial gain, but further examination is necessary to confirm this.

It is an offence for any person to knowingly contravene the requirements of a detention notice and the officer must determine whether or not food information law has been contravened as soon as is practicably possible (and in any event within 21 days). If the officer is satisfied that the law has been contravened the food should be seized and removed to be dealt with by the sheriff. If the officer decides, following further investigation, that no food information law contraventions exist, the food detention notice must be withdrawn and the food released for marketing.

## **Seizure of foods**

If the officer making the determination is satisfied that serious breaches of food information law have occurred, the officer must seize the food and remove it to have it dealt with by the sheriff. This determination must be made as soon as practicable. So, if initial investigations determine serious breaches exist, without the need for further investigation or examination, the officer should seize the food immediately without the use of detention notice procedures.

The sheriff may then order that food is destroyed or disposed of but may also choose to order that the food be modified and returned to the person who was in charge of the food, or to order that the food be redistributed as the sheriff may determine. Expenses in respect of destruction, modification, disposal or distribution would fall to the owner of the food to meet.

## **Compensation**

In circumstances where a detention notice is withdrawn, or the sheriff refuses to make an order confirming food information law has been contravened, the food authority must compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.