

**DRAFT FOOD SAFETY (MISCELLANEOUS PROVISIONS)
(JERSEY) LAW 199**

**Lodged au Greffe on 27th July 1999
by the Health and Social Services Committee**



STATES OF JERSEY

STATES GREFFE

REPORT

1. Introduction

The importance of food safety and hygiene standards has been demonstrated by a number of tragic incidents in the United Kingdom and elsewhere. The Health and Social Services Committee has already introduced under the Food and Drugs (Jersey) Law 1966, a range of options to help in ensuring the safety of foods, including -

- powers to prevent the importation, or to require the re-export, of unfit or unhealthy foods - Imported Food (Jersey) Order 1998;
- standards for food handling and the cleanliness of premises - Food Hygiene (General Provisions) (Jersey) Order 1967.

However, the Committee has limited means to deal effectively with food premises and related activities taking place on food premises if they fall below the appropriate standards.

The purpose of the proposed Law is to provide the Health and Social Services Committee with powers to investigate complaints and carry out inspections relating to food safety and, where a safety risk exists, an emergency prohibition notice or order may be issued to prohibit the food-related activity or use of the premises concerned.

2. Outline of the Law

2.1 Application of the Law

The proposed Law is intended to have a wide application to all food businesses and processes involved in the human food chain. It would apply to all commercial operations relating to food including, for example, the sale and presentation for sale of foods, delivery and serving of food, food preparation, labelling and packaging, storing and transport of food, and importing and exporting.

The legislation would also apply to food sources that might ultimately lead to a health risk, which include crops and animals, birds or fish intended for food purposes, and anything else from which food is derived for sale. The related processes include, for example, harvesting, slaughtering, milking and collecting eggs.

2.2 Functions of the Health and Social Services Committee

A key concept within the Law is a 'health risk condition' which involves imminent risk of injury to health arising from a food business. The risk may relate to a food process or treatment, and the construction or state of food premises and equipment.

The Committee would be empowered, through its Environmental health Officers, to investigate complaints about food health risks and, even where no complaint has been made, carry out inspections to detect a health risk that might lead to injury to health.

2.3 Dealing with a health risk

Once the Committee has been satisfied that a risk to health exists, it may serve an 'emergency prohibition notice' on the proprietor of the business to prohibit the food process or treatment concerned, or to prohibit the use of the premises or equipment either by that business or any other business operating in the same way. The Law creates an offence in respect of anyone who contravenes the emergency prohibition notice.

The emergency prohibition notice is a temporary measure that lapses after three days if the Committee does not make an application to the Court. If an application is made, the Court may revoke the notice or may uphold it with an 'emergency prohibition order'.

If the Committee fails to make an application to the Court within three days it will be liable to compensate the proprietor for any loss suffered from complying with the notice and, if the Court is not satisfied that a health risk exists the Committee will also be liable to pay compensation.

Alternatively, instead of serving a notice, the Committee may seek an 'emergency prohibition order' directly from the Court. In this case, the Committee must advise the proprietor at least one day in advance that it intends to apply for an order.

2.4 Measures to remedy the health risk

The Health and Social Services Committee, through its officers, can decide whether the proprietor has taken adequate measures to address the health risk, or the proprietor may himself apply for an inspection which must be carried out as soon as reasonably practicable (and in any event within 14 days).

If the Committee is not satisfied that adequate measures have been taken by the proprietor, it must state its reasons for refusing a certificate. In this case, the proprietor may appeal to the Court within 21 days of the notice being served.

Once the Health and Social Services Committee is satisfied that a health risk no longer exists, it must issue a certificate to that effect within three days, and the prohibition notice or order ceases to have effect.

2.5 Powers of entry

An authorized officer may enter premises at any reasonable time if he has reason to believe a health risk exists or to carry out any action authorized under the Law. However, access to residential premises is subject to 24 hours' notice.

Access may be authorized by a warrant issued by the Bailiff or a Jurat if admission is refused or if it is anticipated it will be refused, or the premises are unoccupied, in case of emergency or if an application for admission would defeat the object of the entry.

On gaining access, an officer may carry out inspections, measurements or tests and take away samples for the purposes of the Law. He may also inspect or seize and detain records, whether held on computer or otherwise, as evidence in

proceedings under the Law.

On his departure, the officer must ensure the premises are secured as he found them against unauthorized access.

The proposed Law also specifies offences in connection with obstructing authorized access and disclosure of trade secrets by an authorized officer.

2.6 Further provisions

The remaining parts of the Law include -

- provisions regarding the criminal liability of officers of a company, and in respect of aiders and abettors;
- details of the procedures for serving any notice or other documents to be given to a person under the Law.

The final Articles consist in provision to make Rules of Court, saving provisions and specify the short title and commencement by an Appointed Day Act.

Explanatory Note

The purpose of this Law is to make provision for food safety.

Article 1 contains interpretation provisions for the purposes of the Law.

Article 2 describes the functions of the Committee, including its duty to investigate complaints that a health risk condition is fulfilled with regard to a food business and empowers it to cause inspections to be made to ascertain whether such a condition exists.

The effect of *Article 3* is to permit the Committee or the Court to issue an emergency prohibition notice or order, respectively, where there is an risk of injury to health, which may prohibit the use of a process or treatment for the purposes of a food business, the use of premises (either for particular kinds of food business or entirely) or equipment, and may prohibit a person from carrying on or managing a food business. Service of the notice is all that is required in order to impose the prohibition, which will have immediate effect (*paragraph (1)*). Under paragraph (9), a notice under paragraph (1) shall cease to have effect if no application is made within three days for an order under *paragraph (2)*. The intention of this Article is that the Committee (through its officers) will apply for an emergency prohibition order within three days of issuing an emergency prohibition notice. However, it is of course possible for the Committee to go directly to the Court for an emergency prohibition order under paragraph (2). *Paragraph (3)* is designed to give the proprietor notice of the intention to apply for the order. *Paragraph (4)* describes when the health risk condition is fulfilled, whilst *paragraph (5)* sets out the appropriate prohibitions to be imposed. *Paragraphs (6) and (7)* deal with the affixing of copies of notices on premises and the serving of them on proprietors of the business. Either before or after the issue of an emergency prohibition order the Committee can certify that the health risk condition is no longer fulfilled, so that a notice or order shall cease to have effect (*paragraph (10)*). It is possible for the certificate under paragraph (10) to be issued without application by the proprietor of a food business eg. following a further visit by the Committee (through its officers), but it is likely in practice that the proprietor will apply for a prohibition to be lifted and *paragraph (11)* means that the Committee must determine whether to lift the prohibition “as soon as is reasonably practicable” and in any event within 14 days. Where a proprietor

complies with a notice that turns out to be unjustified he will be compensated for any damage suffered by his compliance (*paragraph 12*).

Article 4 provides for appeals.

Article 5 gives powers of entry to an authorized person to enter premises if he suspects, on reasonable grounds, that the health risk condition is fulfilled with respect to any food business on those premises and to take any action authorized by the Law (*paragraph (1)*). *Paragraph (3)* authorizes the Bailiff or a Jurat to issue a warrant if he is satisfied as to certain matters, eg. that admission to premises has been refused or that refusal is apprehended or that the premises are unoccupied or that there is urgency. The warrant authorizes an authorized person to take other persons and equipment as may be necessary into the premises and to take away samples or articles (*paragraph (5)*).

Article 6 makes it an offence to obstruct persons exercising their powers of entry, and for a person exercising such powers to disclose information relating to trade secrets unless the disclosure is made in the performance of his duty.

Article 7 provides that directors, managers, secretaries and similar officers of a company which has been convicted of an offence under the Law are also guilty of the offence if they consented to, connived at, or their neglect contributed to, the commission of the offence (*paragraph (1)*). *Paragraph (2)* provides that the persons who aid and abet in the commission of an offence under this Law are liable to the same treatment as a principal offender.

Article 8 makes provision as to the service of notices.

Article 9 provides for the making of Rules of Court.

Article 10 contains saving provisions.

Article 11 gives the short title to the Law and contains commencement provisions.

**FOOD SAFETY (MISCELLANEOUS PROVISIONS)
(JERSEY) LAW 199**

ARRANGEMENT OF ARTICLES

1. Interpretation
2. Functions of the Committee
3. Emergency prohibition orders and notices
4. Appeals
5. Powers of entry to premises etc.
6. Offences relating to entry
7. Criminal liability of officers; aiders and abettors
8. Service of notices
9. Rules of Court
10. Saving provisions
11. Short title and commencement

**FOOD SAFETY (MISCELLANEOUS PROVISIONS)
(JERSEY) LAW 199**

A LAW to provide for the imposing of prohibition orders on premises used for food business; for procedures relating to them; and for connected purposes; sanctioned by Order of Her Majesty in Council of the

(Registered on the day of 199)

STATES OF JERSEY

The day of 199

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

Interpretation

- (1) In this Law, unless the context otherwise requires -
- “commercial operation”, in relation to any food or contact material, means any of the following, namely -
- (a) selling, possessing for sale and offering, exposing or advertising for sale;
 - (b) consigning, delivering or serving by way of sale;
 - (c) preparing for sale or presenting, labelling or wrapping for the purpose of sale;

Draft Food Safety (Miscellaneous Provisions) (Jersey) Law 199

(d) storing or transporting for the purpose of sale;

(e) importing and exporting;

and, in relation to any food source, means deriving food from it for the purpose of sale or for purposes connected with sale;

“the Committee” means the Health and Social Services Committee;

“contact material” means any article or substance which is intended to come into contact with food;

“the Court” means the Royal Court;

“emergency prohibition notice” and “emergency prohibition orders” have the meanings respectively assigned to them by Article 3;

“equipment” includes any apparatus;

“food” and “business” have the meanings respectively assigned to them by the Food and Drugs (Jersey) Law 1966;¹

“food business” means any business in the course of which commercial operations with respect to food or food sources are carried out;

“food source” means any growing crop or live animal, bird or fish from which food is intended to be derived (whether by harvesting, slaughtering, milking, collecting eggs or otherwise);

“injury to health” includes any impairment whether permanent or temporary;

“premises” includes any place, vehicle, stall or moveable structure.

¹ Volume 1966-1967, page 141, Volume 1992-1993, page 107, and Volume 1994-1995, pages 73 and 577.

Draft Food Safety (Miscellaneous Provisions) (Jersey) Law 199

(2) Unless the context otherwise require, references in this Law to any other enactment shall be construed as references to that enactment as amended, extended or applied by or under any other enactment and to any enactment which repeals and re-enacts the first-mentioned enactment with or without further amendment.

(3) A reference in this Law to a numbered Article without further identification is a reference to the Article so numbered in this Law.

(4) A reference in any Article of this Law to a paragraph, sub-paragraph or clause by number or letter only, and without further identification, is a reference to the paragraph, sub-paragraph or clause of that number or letter contained in the Article of this Law in which such reference occurs.

ARTICLE 2

Functions of the Committee

(1) The Committee shall investigate a complaint that the health risk condition is fulfilled with respect to any food business.

(2) The Committee may cause inspections to be made, to detect whether the health risk condition is fulfilled, in respect of a food business where no complaint has been made to it.

ARTICLE 3

Emergency prohibition orders and notices

(1) If the Committee is satisfied that the health risk condition is fulfilled with respect to any food business, it may, by a notice served on the proprietor of the business (in this Law referred to as an “emergency prohibition notice”), impose the appropriate prohibition.

(2) If the Court is satisfied, on the application of the Committee, that the health risk condition is fulfilled with respect to any

Draft Food Safety (Miscellaneous Provisions) (Jersey) Law 199

food business, the Court shall by an order (in this Law referred to as an “emergency prohibition order”), impose the appropriate prohibition.

(3) The Committee shall not apply for an emergency prohibition order unless, at least one day before the date of the application, it has notified the proprietor of the business of the intention to apply for the order.

(4) The health risk condition is fulfilled with respect to any food business if any of the following involves imminent risk of injury to health, namely -

- (a) the use for the purposes of the business of any process or treatment;
- (b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment;
- (c) the state or condition of any premises or equipment used for the purposes of the business.

(5) The appropriate prohibition is -

- (a) in a case falling within sub-paragraph (a) of paragraph (4), a prohibition on the use of the process or treatment for the purposes of the business;
- (b) in a case falling within sub-paragraph (b) of that paragraph, a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description;
- (c) in a case falling within sub-paragraph (c) of that paragraph, a prohibition on the use of the premises or equipment for the purposes of any food business.

(6) As soon as practicable after the service of an emergency prohibition notice, a copy of the notice shall be affixed in a conspicuous

Draft Food Safety (Miscellaneous Provisions) (Jersey) Law 199

position on the premises used for the purposes of the business, and any person who knowingly contravenes such a notice shall be guilty of an offence.

(7) As soon as practicable after the making of an emergency prohibition order, a copy of the order shall be -

- (a) served on the proprietor of the business; and
- (b) affixed in a conspicuous position on the premises used for the purposes of the business,

and any person who knowingly contravenes such an order shall be guilty of an offence.

(8) A person guilty of an offence under paragraph (6) or (7) shall be liable to a fine or to imprisonment for a term not exceeding two years or to both.

(9) An emergency prohibition notice shall cease to have effect -

- (a) if no application for an emergency prohibition order is made within the period of three days beginning with the service of the notice, at the end of that period;
- (b) if an application is so made, on the determination or abandonment of the application.

(10) An emergency prohibition notice or emergency prohibition order shall cease to have effect on the issue by the Committee of a certificate to the effect that it is satisfied that the proprietor has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the business.

(11) The Committee shall issue a certificate under paragraph (10) within three days of its being satisfied as mentioned in that paragraph, and on application by the proprietor for such a certificate, the Committee shall -

Draft Food Safety (Miscellaneous Provisions) (Jersey) Law 199

- (a) determine, as soon as is reasonably practicable and in any event within fourteen days, whether or not it is so satisfied; and
- (b) if it determines that it is not so satisfied, give notice to the proprietor of the reasons for that determination.

(12) Where an emergency prohibition notice is served on the proprietor of a business, the Committee shall compensate him in respect of any loss suffered by reason of his complying with the notice unless -

- (a) an application for an emergency prohibition order is made within the period of three days beginning with the service of the notice; and
- (b) the Court declares itself satisfied, on the hearing of the application, that the health risk condition was fulfilled with respect to the business at the time when the notice was served.

ARTICLE 4**Appeals**

A person given notice pursuant to sub-paragraph (b) of paragraph (11) of Article 3 of a decision by the Committee to refuse to issue a certificate referred to in paragraph (10) of that Article may appeal against the notice to the Court within twenty-one days of receipt of the notice.

ARTICLE 5**Powers of entry to premises etc.**

(1) Subject to paragraph (2), any authorized person may, on production, if so required, of his authority, enter any premises at any reasonable time -

Draft Food Safety (Miscellaneous Provisions) (Jersey) Law 199

- (a) if he suspects, on reasonable grounds, that the health risk condition is fulfilled with respect to any food business on those premises; or
- (b) for the purpose of taking any action authorized by this Law.

(2) Admission by virtue of paragraph (1) to any premises used wholly or mainly for residential purposes shall not be demanded as of right unless twenty-four hours notice of the intended entry has been given to the occupier.

(3) If it is shown to the satisfaction of the Bailiff or a Jurat by evidence on oath that -

- (a) admission to any premises has been refused, or that refusal is apprehended, or that the premises are unoccupied or that the occupier is temporarily absent, or that the case is one of urgency, or that an application for admission would defeat the object of the entry; and
- (b) there is reasonable ground for entry into the premises for the purpose for which entry is required,

the Bailiff or the Jurat may issue a warrant under this Article authorizing the Committee by any authorized person to enter the premises, if need be by force.

(4) A warrant issued in pursuance of paragraph (3) shall continue in force for a period of one month.

(5) An authorized person entering any premises by virtue of paragraph (1) or of a warrant under paragraph (3) may -

- (a) take with him such other person and such equipment as may be necessary;
- (b) carry out such inspections, measurements and tests as he considers necessary for the discharge of any of the Committee's functions under this Law; and

Draft Food Safety (Miscellaneous Provisions) (Jersey) Law 199

- (c) take away such samples or articles as he considers necessary for that purpose.

(6) An authorized person entering any premises by virtue of paragraph (1), or of a warrant issued under paragraph (3), may inspect any records (in whatever form they are held) relating to a food business and, where any such records are kept by means of a computer -

- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and

- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require.

(7) Any authorized person exercising any power conferred by paragraph (6) may -

- (a) seize and detain any records which he has reason to believe may be required as evidence in proceedings under this Law; and

- (b) where the records are kept by means of a computer, may require the records to be produced in a form in which they may be taken away.

(8) On leaving any unoccupied premises which he has entered by virtue of paragraph (1) or of a warrant under paragraph (3) the authorized person shall leave them as effectively secured against unauthorized entry as he found them.

(9) In this Article “authorized person” means a person authorized by the Committee for the purpose of discharging any or all of the functions contained in this Law.

Draft Food Safety (Miscellaneous Provisions) (Jersey) Law 199

ARTICLE 6

Offences relating to entry

(1) A person who wilfully obstructs any person acting in the exercise of any powers conferred by Article 5 shall be guilty of an offence and liable, on conviction, to a fine not exceeding level 3 on the standard scale.²

(2) If a person discloses any information relating to any trade secret obtained in the exercise of any powers conferred by Article 5, he shall, unless the disclosure was made in the performance of his duty, or with the consent of the person having the right to disclose the information, be guilty of an offence and liable, on conviction, to a fine not exceeding level 4 on the standard scale.²

ARTICLE 7

Criminal liability of officers; aiders and abettors

(1) Where an offence under this Law committed by a company is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary, or other similar officer of the company or any person who was purporting to act in any such capacity, he, as well as the company, shall be guilty of that offence and shall be liable to be prosecuted and punished accordingly.

(2) Without prejudice to paragraph (1), any person who aids, abets, counsels or procures the commission of an offence under this Law shall be liable to be dealt with, tried and punished as a principal offender.

² Volume 1992-1993, page 437.

Draft Food Safety (Miscellaneous Provisions) (Jersey) Law 199

ARTICLE 8

Service of notices

(1) This Article shall have effect in relation to any notice or other document required or authorized by or under this Law to be given to or served on any person.

(2) Any such document may be given to or served on the person in question -

- (a) by delivering it to him;
- (b) by leaving it at his proper address; or
- (c) by sending it by post to him at that address.

(3) Any such document may -

- (a) in the case of a company, be given to or served on the secretary, clerk or other similar officer of the company or any person who purports to act in any such capacity, by whatever name called;
- (b) in the case of a partnership, be given to or served on a partner or a person having the control or management of the partnership business.

(4) For the purposes of this Article and Article 12 of the Interpretation (Jersey) Law 1954³ (meaning of service by post) in its application to this Article, the proper address of any person to or on whom a document is to be given or served shall be his last known address, except that -

- (a) in the case of a company or its secretary, clerk or other officer or person referred to in sub-paragraph (a) of paragraph (3), it shall be the address of the registered or principal office of the company;

³ Tome VIII, page 381.

Draft Food Safety (Miscellaneous Provisions) (Jersey) Law 199

- (b) in the case of a partnership or a person having the control or management of the partnership business, it shall be that of the principal office of the partnership,

and for the purposes of this paragraph the principal office of a company registered outside the Island or of a partnership carrying on business outside the Island shall be their principal office within the Island.

(5) If the person to be given or served with any document mentioned in paragraph (1) has specified an address within the Island other than his proper address within the meaning of paragraph (4) as the one at which he or someone on his behalf will accept documents of the same description as that document, that address shall also be treated for the purposes of this Article and Article 12 of the Interpretation (Jersey) Law 1954⁴ as his proper address.

ARTICLE 9

Rules of Court

Rules may be made in the manner prescribed by the Royal Court (Jersey) Law 1948⁵ to make such provision as appears to the Superior Number of the Royal Court to be necessary or expedient for the purposes of this Law.

ARTICLE 10

Saving provisions

This Law shall be in addition to and not in derogation of -

- (a) the “Loi (1934) sur la Santé Publique”;⁶ and
- (b) any other law relating to public health.

⁴ Tome VIII, page 381.

⁵ Tome VII, page 502, Volume 1979-1981, page 195, Volume 1984-1985, pages 175 and 178, Volume 1990-1991, page 113, Volume 1992-1993, page 461, and Volume 1996-1997, pages 147, 148 and 665.

⁶ Tome VII, page 114.

Draft Food Safety (Miscellaneous Provisions) (Jersey) Law 199

ARTICLE 11

Short title and commencement

This Law may be cited as the Food Safety (Miscellaneous Provisions) (Jersey) Law 199 and shall come into force on such day as the States may by Act appoint.