
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 187

The Food (Jelly Mini-Cups) (Emergency Control) (Scotland) Regulations 2004

Inspection and seizure of jelly mini-cups

5.—(1) An authorised officer of a food authority may, for the purpose of enforcing these Regulations, at all reasonable times inspect any jelly mini-cups which—

- (a) have been sold or are offered or exposed for sale; or
- (b) are in the possession of, or have been deposited with or consigned to, any person for the purpose of sale or of preparation for sale.

(2) Paragraphs (3) to (8) shall apply where, whether or not on an inspection carried out under paragraph (1), it appears to an authorised officer that—

- (a) any person has carried out commercial operations with respect to jelly mini-cups which contain a prohibited additive in contravention of regulation 3(1) of these Regulations; or
- (b) any person has used a prohibited additive in the manufacture of any jelly mini-cups in contravention of regulation 3(2) of these Regulations.

(3) The authorised officer may either—

- (a) give notice to the person in charge of such jelly mini-cups that, until the notice is withdrawn, the jelly mini-cups or any specified quantity of them—
 - (i) are not to be used for human consumption; and
 - (ii) either are not to be removed or are not to be removed except to some place specified in the notice; or

(b) seize such jelly mini-cups and remove them in order to have them dealt with by the sheriff, and any person who knowingly contravenes the requirements of a notice under paragraph (a) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where the authorised officer exercises the powers conferred by paragraph (3)(a) above, that officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not that officer is satisfied that there has been no contravention of regulation 3(1) or (2) of these Regulations and—

- (a) if the authorised officer is so satisfied, shall forthwith withdraw the notice; or
- (b) if the authorised officer is not so satisfied, shall seize the jelly mini-cups and remove them in order to have them dealt with by the sheriff.

(5) Where an authorised officer exercises the powers conferred by paragraph (3)(b) or (4)(b) above, the authorised officer shall inform the person in charge of the jelly mini-cups of the intention to have them dealt with by the sheriff and any person who under regulation 3(3) of these Regulations might be liable to a prosecution in respect of the jelly mini-cups shall, if that person attends before the sheriff by whom the jelly mini-cups fall to be dealt with, be entitled to be heard and to call witnesses.

(6) If it appears to the sheriff, on the basis of such evidence as the sheriff considers appropriate in the circumstances, that any person has contravened regulation 3(1) or (2) of these Regulations in

relation to any jelly mini-cups falling to be dealt with under this section, the sheriff shall condemn the jelly mini-cups and order–

- (a) the jelly mini-cups to be destroyed or to be so disposed of as to prevent them from being used for human consumption; and
- (b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the jelly mini-cups.

(7) If a notice under paragraph (3)(a) above is withdrawn, or the sheriff by whom any jelly mini-cups fall to be dealt with under this section refuses to condemn them, the food authority shall compensate the owner of the jelly mini-cups for any depreciation in their value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under subsection (7) above shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.