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## SCOTTISH STATUTORY INSTRUMENTS

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### 2005 No. 243

## The Materials and Articles in Contact with Food (Scotland) Regulations 2005

### PART 5

#### General

#### **Offences, penalties and defence in relation to exports**

**11.**—(1) Any person who contravenes or fails to comply with the provisions of regulations 6, 8 or 9 shall be guilty of an offence.

(2) Any person found guilty of an offence under paragraph (1) or under regulation 4 is liable—

- (a) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both;
- (b) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 6 months or to both.

(3) No prosecution for an offence under these Regulations shall be begun after the expiry of—

- (a) three years from the commission of the offence; or
- (b) one year from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings comes to the knowledge of the prosecutor,

whichever is the earlier.

(4) For the purposes of paragraph (3), a certificate signed by or on behalf of the prosecutor, and stating the date on which evidence sufficient in the prosecutor's opinion to warrant the proceedings came to the knowledge of the prosecutor, shall be conclusive evidence of that fact.

(5) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(6) In any proceedings for an offence of contravening or failing to comply with these Regulations it shall be a defence for the accused to prove that the material or article in respect of which the offence is alleged to have been committed was intended for export to a country that is not a member State and that the material or article could lawfully be exported there in the circumstances provided for in relation to food and feed in Article 12 of Regulation (EC) No. 178/2002(1).

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#### **Commencement Information**

**11** Reg. 11 in force at 21.5.2005, see [reg. 1\(1\)](#)

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## Enforcement

**12.**—(1) Subject to paragraph (2) it shall be the duty of each food authority to enforce and execute these Regulations and the provisions of the Community Regulation mentioned in paragraphs (a) to (f) of regulation 4 within its area.

(2) In addition, the Agency may, if it considers it appropriate to do so, enforce and execute Articles 16.1 and 17.2.

### Commencement Information

**I2** Reg. 12 in force at 21.5.2005, see [reg. 1\(1\)](#)

## Analysis by Government Chemist

**13.**—(1) The sheriff before whom any criminal proceedings are taken under these Regulations shall, on the application of either the prosecutor or the accused, cause—

- (a) any material or article which is the subject of the proceedings and which, if it has already been tested is capable of being further tested; or
- (b) any food which has been in contact with any such material or article,

to be sent to the Government Chemist who shall carry out such testing as is appropriate and transmit to the court a certificate of the result and the costs of the testing shall be borne by the prosecutor or the accused as the sheriff may order.

(2) Any certificate of the results of testing transmitted by the Government Chemist under this regulation shall be signed by or on behalf of the Government Chemist, and the testing may be carried out by any person under the direction of the person who signs the certificate.

(3) Any certificate transmitted by the Government Chemist in accordance with paragraph (2) shall be taken as sufficient evidence of the facts stated therein unless any party to the proceedings requests that the person by whom the certificate is signed be called as a witness.

(4) In this regulation “testing” includes examination and analysis, and “tested” shall be construed accordingly.

### Commencement Information

**I3** Reg. 13 in force at 21.5.2005, see [reg. 1\(1\)](#)

## Application of various provisions of the Act

**14.**—(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof shall be construed as a reference to these Regulations—

- (a) section 2 (extended meaning of “sale” etc.);
- (b) section 20 (offences due to fault of another person);
- (c) section 21 (defence of due diligence) with the modification that in subsection (4) the references to “sale” shall be deemed to include references to “placing on the market”;
- (d) section 30(8) (which relates to documentary evidence);
- (e) section 35(1) to (3) (punishment of offences) in so far as it relates to offences under section 33(1) and (2) as applied by paragraph (3)(b);
- (f) section 36 (offences by bodies corporate); and

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(g) section 36A (offences by Scottish partnerships).

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the reference in subsection (1) to the Act shall be construed as including a reference to the Community Regulation.

(3) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act shall be construed as including a reference to the Community Regulation and these Regulations—

- (a) section 3 (presumptions that food intended for human consumption) with the modifications that the references to “sold” and “sale” shall be deemed to include references to “placed on the market” and “placing on the market” respectively;
- (b) section 33 (obstruction etc. of officers); and
- (c) section 44 (protection of officers acting in good faith) with the modification that references to “a food authority” shall include “the Agency”.

#### Commencement Information

**I4** Reg. 14 in force at 21.5.2005, see [reg. 1\(1\)](#)

#### Amendments to the 1998 Regulations

**15.**—(1) The 1998 Regulations are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2 (interpretation)—

- (a) omit the definition of “the 1987 Regulations”;
- (b) after the definition of “the 1992 Regulations” insert—

““the 2005 Regulations” means the Materials and Articles in Contact with Food (Scotland) Regulations 2005;”(2).

(3) In regulation 6(1)(b) (method of testing the capability of plastic materials or articles to transfer constituents and methods of analysis)(3) for “regulation 14(2) of the 1987 Regulations” substitute “regulation 7(2) of the 2005 Regulations”.

(4) In regulation 9(1) (enforcement) for “the 1987 Regulations” substitute “the 2005 Regulations”.

(5) In regulation 11 (presumption as to food with which a plastic material or article, adhesive or material or article covered by a surface coating is to come into contact) for “the 1987 Regulations” substitute “Regulation (EC) No. 1935/2004 of the European Parliament and of the Council”(4).

(6) For regulation 12 (application of other provisions)(5) substitute—

#### “Application of other provisions

**12.**—(1) The following provisions of the Act shall apply for the purposes of these Regulations as they apply for the purposes of the Act—

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 30(8) (relating to documentary evidence); and
- (c) section 44 (protection of officers acting in good faith).

(2) [S.S.I. 2005/ 243](#) .

(3) Regulation 6(1) was inserted by [S.S.I. 2002/498](#).

(4) O.J. No. L 338, 13.11.04, p.4.

(5) Regulation 12 was amended by [S.S.I. 2002/498](#).

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(2) Regulation 13 of the 2005 Regulations shall apply in relation to proceedings taken under these Regulations as it does to proceedings taken under those Regulations.”.

**Commencement Information**

**I5** Reg. 15 in force at 21.5.2005, see [reg. 1\(1\)](#)

**Revocations**

- 16.** The following Regulations or parts thereof are revoked—
- (a) the Materials and Articles in Contact with Food Regulations 1987(6);
  - (b) regulation 3 of the Food Safety (Export) Regulations 1991(7);
  - (c) The Materials and Articles in Contact with Food (Amendment) Regulations 1994(8).

**Commencement Information**

**I6** Reg. 16 in force at 21.5.2005, see [reg. 1\(1\)](#)

(6) S.I.1987/1523, amended by S.I. 1990/2487, 1991/1476 and 1994/979.  
(7) S.I. 1991/1476.  
(8) S.I. 1994/979.

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