
SCOTTISH STATUTORY INSTRUMENTS

2005 No. 332

**The Eggs (Marketing Standards)
(Enforcement) (Scotland) Regulations 2005**

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Eggs (Marketing Standards) (Enforcement) (Scotland) Regulations 2005 and shall come into force on 1st July 2005.

(2) These Regulations shall extend to Scotland only.

Commencement Information

II Reg. 1 in force at 1.7.2005, see [reg. 1\(1\)](#)

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

“the Agency” means the Food Standards Agency;

“authorised officer”, in relation to an enforcement authority, means any person, (whether or not an officer of the authority) who is authorised by the authority in writing, either generally or specially, to act in matters arising under these Regulations;

“Council Decision [94/371/EC](#)” means Council Decision [94/371/EC\(1\)](#) laying down specific public health conditions for the putting on the market of certain types of eggs;

“enforcement authority” means an authority exercising a function conferred on the authority by regulation 4;

“sale” includes supply of food otherwise than on sale, in the course of a business, possession for sale and offer, exposure and advertisement for sale;

“specified Community provision” means—

(a) a provision of a Regulation of the European Community referred to in column 1 of Schedule 1 to these Regulations, which is specified in column 2 and the subject matter of which is described in column 3 of that Schedule opposite the reference in Column 1; and

(b) any provision of the Council Decision [94/371/EC](#) specified in regulation 3,

and “the specified community provisions” shall be construed accordingly.

(2) Other expressions used in these Regulations and in any specified Community provision have the same meaning in these Regulations as they bear in that provision unless the context requires otherwise.

Status: Point in time view as at 01/07/2005.

Changes to legislation: There are currently no known outstanding effects for the The Eggs (Marketing Standards) (Enforcement) (Scotland) Regulations 2005. (See end of Document for details)

Commencement Information

I2 Reg. 2 in force at 1.7.2005, see [reg. 1\(1\)](#)

Requirements under the Council Decision

3. Any person carrying on an activity regulated by Article 2, 3(1) or (2), 4 or 5 of the Council Decision [94/371/EC](#) shall comply with that provision.

Commencement Information

I3 Reg. 3 in force at 1.7.2005, see [reg. 1\(1\)](#)

Enforcement authorities

4.—(1) Each food authority within its area shall, and the Scottish Ministers may, execute and enforce any specified Community provision which relates to the sale of eggs by a retailer.

(2) Each food authority within its area shall execute and enforce any specified Community provision which relates to the use of eggs as described in Article 5 of the Council Decision [94/371/EC](#).

(3) In so far as any specified Community provision does not relate to either of the matters referred to in paragraphs (1) or (2)—

- (a)** the Scottish Ministers shall execute and enforce those covered by paragraph (a) of the definition of “specified Community provision” in regulation 2; and
- (b)** the Agency shall execute and enforce those covered by paragraph (b) of that definition with the exception of Article 5 of the Council Decision [94/371/EC](#).

Commencement Information

I4 Reg. 4 in force at 1.7.2005, see [reg. 1\(1\)](#)

Requirements relating to the enforcement of any specified Community provision

5. An authorised officer of an enforcement authority, on producing if so required a duly authenticated document showing the authority of the officer, may—

- (a)** require a person not to remove any eggs, or cause them to be removed, from any land or premises for such period as the officer may reasonably specify as being necessary for the purpose of the inspection by that officer of those eggs;
- (b)** require a person to ensure that any container of eggs which does not comply in any respect with the requirements of any specified Community provision whether in relation to eggs contained in it or otherwise, complies with those requirements before it is removed from any land or premises, except as may be otherwise directed by an authorised officer.

Commencement Information

I5 Reg. 5 in force at 1.7.2005, see [reg. 1\(1\)](#)

Open air runs

6. Pursuant to the second indented point of paragraph 1(a) of Annex III to Commission Regulation (EC) No. 2295/2003 as amended⁽²⁾, the Scottish Ministers authorise livestock grazing on open air runs to which that provision applies.

Commencement Information

I6 Reg. 6 in force at 1.7.2005, see [reg. 1\(1\)](#)

Establishments producing free range and barn eggs

7. Pursuant to paragraph 3 of Annex III to Commission Regulation (EC) No. 2295/2003, the Scottish Ministers authorise the production of eggs to which point 1(a) or (b) of the Annex applies in establishments to which paragraph 3 applies and which do not comply with the obligations referred to in the second sentence of point 1(d) and point 1(e) of Article 4 of Council Directive 1999/74/EC⁽³⁾ as amended, in the case of free range hens and points 2 and 3(a)(i) and 3(b)(i) of Article 4(1) of that Directive.

Commencement Information

I7 Reg. 7 in force at 1.7.2005, see [reg. 1\(1\)](#)

Marking of eggs for hatching

8. For the purposes of Article 2(2) of Commission Regulation (EEC) No. 1868/77 as amended⁽⁴⁾, eggs for hatching may be marked in a different manner from that specified in Article 2(1) of that Regulation if such marking is—

- (a) in black;
- (b) indelible;
- (c) clearly visible;
- (d) at least 10mm² in area,

and is carried out prior to the insertion of the eggs into an incubator at a producer establishment or hatchery.

Commencement Information

I8 Reg. 8 in force at 1.7.2005, see [reg. 1\(1\)](#)

(2) O.J. No. L 340, 24.12.2003; p.16 as amended by Commission Regulation (EC) No. 818/2004, O.J. No. L 153, 30.4.2004, p.82 and Commission Regulation (EC) No. 1515/2004, O.J. No. L 278, 27.8.2004, p.7.

(3) O.J. No. L 203, 3.8.1999, p.53 as amended by Council Regulation (EC) No. 806/2003; O.J. No. L 122, 16.5.2003, p.1.

(4) O.J. No. L 209, 17.8.1977, p.1, as amended by Commission Regulation (EEC) No. 3759/85, O.J. No. L 356, 31.12.1985, p.64, Commission Regulation (EEC) No. 1351/87, O.J. No. L 127, 16.5.1987, p.18, Commission Regulation (EEC) No. 2773/90, O.J. No. L 267, 29.9.1990, p.25, Commission Regulation (EC) No. 3239/94, O.J. No. L 338, 28.12.1994, p.48.

Status: Point in time view as at 01/07/2005.

Changes to legislation: There are currently no known outstanding effects for the The Eggs (Marketing Standards) (Enforcement) (Scotland) Regulations 2005. (See end of Document for details)

Registration authority

9. The Scottish Ministers shall act as the registration authority for the purposes of Article 3 of Regulation (EEC) No. 2782/75(5) of the Council as amended on the production and marketing of eggs for hatching and of farmyard poultry chicks.

Commencement Information

I9 Reg. 9 in force at 1.7.2005, see [reg. 1\(1\)](#)

Keeping of records

10. An enforcement authority may serve a notice in writing on a person carrying on any activity regulated by a specified Community provision requiring that person to–

- (a) keep or cause to be kept such records as the enforcement authority may reasonably require for the purposes of executing or enforcing any such provision;
- (b) provide the enforcement authority with such information derived from such records as the enforcement authority may from time to time require;
- (c) provide the enforcement authority with such records as the enforcement authority may from time to time require; and
- (d) retain such records for such period as the enforcement authority may reasonably require.

Commencement Information

I10 Reg. 10 in force at 1.7.2005, see [reg. 1\(1\)](#)

Offences and penalty

11. If any person contravenes or fails to comply with–

- (a) any specified Community provision; or
- (b) any requirement properly imposed on that person under regulation 5 or 10,

that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Commencement Information

I11 Reg. 11 in force at 1.7.2005, see [reg. 1\(1\)](#)

Duty to give assistance and provide information

12. Each enforcement authority shall give such assistance and information to any other enforcement authority as that other enforcement authority may reasonably require for the purpose of its duties under these Regulations.

(5) O.J. No. L 282, 1.11.1975, p.100, as amended by Council Regulation (EEC) No. 3485/80 O.J. No. L 365, 31.12.1980, p.1, Council Regulation (EEC) No. 3791/85, O.J. No. L 367, 31.12.1985, p.6, Council Regulation (EEC) No. 3494/86, O.J. No. L 323, 18.11.1986, p.1, Commission Regulation (EEC) No. 3987/87, O.J. No. L 376, 31.12.1987, p.20, Commission Regulation (EEC) No. 1057/91, O.J. No. L 107, 27.4.1991, p.11, and Commission Regulation (EC) No. 2916/95, O.J. No. L 305, 19.12.1995, p.49.

Commencement Information

I12 Reg. 12 in force at 1.7.2005, see [reg. 1\(1\)](#)

Appeals

13.—(1) Any person who is aggrieved by a decision of the Scottish Ministers to—

- (a) refuse or withdraw a registration of an establishment under Article 3 of Regulation (EEC) No. 2782/75 of the Council; or
- (b) refuse or withdraw an authorisation to grade eggs under Article 5 of Council Regulation (EEC) No. 1907/90(6) as amended,

may appeal against that decision to the sheriff.

(2) Section 37(4) to (6) of the Act shall have effect in relation to an appeal under this regulation as it has effect in relation to an appeal under that section, but with the omission of—

- (a) the references to appeals for which provision is made by regulations under Part II of the Act;
- (b) the references to subsection (3) and appeals to the magistrates' court in subsections (5) and (6); and
- (c) subsection (5)(b) and the word “or” immediately preceding it.

(3) The withdrawal of a registration, approval or authorisation shall not take effect until the time for appealing against it has expired and, if an appeal is lodged, until the appeal is finally disposed of or abandoned.

Commencement Information

I13 Reg. 13 in force at 1.7.2005, see [reg. 1\(1\)](#)

Extended period for bringing prosecutions

14.—(1) Proceedings for an offence under these Regulations may, subject to paragraph (2), be commenced within the period of one year from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor.

(2) No such proceedings shall be commenced by virtue of this regulation more than three years after the commission of the offence.

(3) For the purposes of this regulation—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor shall be conclusive evidence of that fact;
- (b) a certificate stating that matter purporting to be signed shall be deemed to be so signed unless the contrary is proved.

(6) O.J. No. L 173, 6.7.1990, p.5 as amended by Council Regulation (EEC) No. 2617/93, O.J. No. L 240, 25.9.1993, p.1, Council Regulation (EC) No. 3117/94 O.J. No. L 330, 21.12.1994, p.4, Council Regulation (EC) No. 818/96, O.J. No. L 111, 4.5.1996, p.1, Council Regulation (EC) No. 5/2001, O.J. No. L 2, 5.1.2001, p.1, and Council Regulation (EC) No. 2052/2003, O.J. No. L 305, 22.11.2003, p.1.

Status: Point in time view as at 01/07/2005.

Changes to legislation: There are currently no known outstanding effects for the The Eggs (Marketing Standards) (Enforcement) (Scotland) Regulations 2005. (See end of Document for details)

Commencement Information

I14 Reg. 14 in force at 1.7.2005, see [reg. 1\(1\)](#)

Application of various provisions of the Act

15.—(1) The following provisions of the Act shall apply for the purposes of these Regulations and, unless the context otherwise requires, any reference in them to the Act (or Part thereof) shall be construed as a reference to these Regulations—

- (a) section 3 (presumptions that food is intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21 (defence of due diligence)(7) as it applies for the purposes of sections 14 or 15;
- (d) section 30(8) (which relates to documentary evidence);
- (e) section 35(1) to (3)(8) (punishment of offences) in so far as it relates to offences under section 33(1) and (2) as applied by subsection (2)(b) below;
- (f) section 36 (offences by bodies corporate);
- (g) section 36A(9) (offences by Scottish partnerships); and
- (h) section 50(10) (service of documents).

(2) The following provisions of the Act shall apply for the purposes of these Regulations—

- (a) section 32 (powers of entry) (with the modification that references to a food business shall be construed, for the purposes of these Regulations, as including a reference to a hatchery);
- (b) section 33 (obstruction etc. of officers); and
- (c) section 44 (protection of officers acting in good faith) (with the modification that the reference to an officer of a food authority shall be construed, for the purposes of these Regulations, as including a reference to an authorised officer of an enforcement authority),

and any reference in these provisions to the Act shall be construed for the purposes of these Regulations as including a reference to the specified Community provisions.

Commencement Information

I15 Reg. 15 in force at 1.7.2005, see [reg. 1\(1\)](#)

Revocations

16. The Regulations specified in Schedule 2 are hereby revoked.

Commencement Information

I16 Reg. 16 in force at 1.7.2005, see [reg. 1\(1\)](#)

(7) Section 21 has been amended by S.I.2004/3279.

(8) Section 35(3) has been amended by S.I. 2004/3279.

(9) Section 36A was inserted by the Food Standards Act 1999 (c. 28), Schedule 5, paragraph 16.

(10) Section 50 was amended by the Deregulation and Contracting Out Act 1994 (c. 40), Schedule 16, paragraph 18.

St Andrew's House, Edinburgh
8th June 2005

ROSS FINNIE
A member of the Scottish Executive

Status:

Point in time view as at 01/07/2005.

Changes to legislation:

There are currently no known outstanding effects for the The Eggs (Marketing Standards) (Enforcement) (Scotland) Regulations 2005.