

2005 No. 332

FOOD

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

<i>Made</i> - - - -	<i>8th June 2005</i>
<i>Laid before the Scottish Parliament</i>	<i>9th June 2005</i>
<i>Coming into force</i> - -	<i>1st July 2005</i>

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The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(b), (d), (e) and (f), (2) and (3), 17(1) and (2), 19(1)(a), 26(1)(a), (2)(a), (b), (c), (e) and (f), (3), 48(1) and paragraphs 5 and 7 of Schedule 1 to the Food Safety Act 1990, having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency(a) and in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(b) and of all other powers enabling them in that behalf, hereby make the following Regulations:

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.

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(c) 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.

(a) 1990 c.16; section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c.40), Schedule 9, paragraph 6 and by the Food Standards Act 1999 (c.28) (“the 1999 Act”), Schedule 5, paragraph 10(3); sections 16(1) and (2), 19(1) and 48(1) were amended by the 1999 Act, section 40(1) and Schedule 5, paragraph 8; section 17(1) and (2) was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 12, section 26(3) was amended by the 1999 Act, section 40(4) and Schedule 6. Section 48(4A) was inserted by section 40(1) and paragraph 21 of Schedule 5 to the 1999 Act. Amendments made by Schedule 5 to the 1999 Act shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) by virtue of section 40(2) of the 1999 Act, section 48(4) is disapplied in respect of these regulations by virtue of section 48(4C), inserted by S.I. 2004/2990. The functions of the Secretary of State, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. In so far as not transferred those functions under sections 6(4), 16(1), 17, 26 and 48(1) were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).

(b) 1972 c.68; section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(c) O.J. No. L 168, 2.7.1994, p.34.

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.

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.

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.

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^(a), the Scottish Ministers authorise livestock grazing on open air runs to which that provision applies.

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^(b) 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.

(a) 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.
(b) 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.

Marking of eggs for hatching

8. For the purposes of Article 2(2) of Commission Regulation (EEC) No. 1868/77 as amended(a), 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.

Registration authority

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

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.

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.

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.

(a) 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.

(b) 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.

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(a) 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.

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.

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)(b) 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)(c) (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);

(a) 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.

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

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

(g) section 36A(a) (offences by Scottish partnerships); and

(h) section 50(b) (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.

Revocations

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

ROSS FINNIE

A member of the Scottish Executive

St Andrew's House,
Edinburgh
8th June 2005

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

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

SCHEDULE 1

Regulation 2

Community Provisions

<i>Column 1</i> <i>Regulations containing</i> <i>Community provisions</i>	<i>Column 2</i> <i>Provision</i>	<i>Column 3</i> <i>Subject matter</i>
Council Regulation (EEC) No. 1907/90(a) on certain marketing standards, as amended.	Article 2	Restriction on marketing of eggs.
	Article 3	Restriction on mixing of specified kinds of eggs.
	Article 4	Restriction on delivery of eggs.
	Article 5	Requirements relating to grading of eggs.
	Article 6	Requirements relating to classification of eggs.
	Article 7	Requirements relating to stamping of eggs.
	Article 8	Requirements relating to marking Class B eggs and downgrading Class A and washed eggs.
	Article 9	Restriction on marking eggs.
	Article 10	Requirements relating to information to be included on packs of eggs.
	Article 11	Requirements relating to information to be included on packs of eggs.
	Article 12	Requirements relating to use of “extra” or “extra fresh” on small packs.
	Article 13	Requirements relating to retail sale of eggs.
	Article 14	Prohibition on use of additional indications.
	Article 15	Restrictions on the circulation of imported eggs.

(a) 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, Council Regulation (EC) No. 2052/2003, O.J. No. L 305, 22.11.2003, p.1.

<i>Column 1 Regulations containing Community provisions</i>	<i>Column 2 Provision</i>	<i>Column 3 Subject matter</i>
	Article 16	Requirements relating to eggs for export.
Commission Regulation (EC) No. 2295/2003(a) as amended, introducing detailed rules for implementing Regulation (EEC) No. 1907/90.	Article 1	Requirements relating to the collection of eggs.
	Article 2	Requirements relating to the activities of packing centres.
	Article 3	Requirements relating to collectors and packing centres.
	Article 4	Requirements relating to approval of packing centres and registration of collectors.
	Article 5	Requirements relating to Grade A eggs.
	Article 6	Requirements relating to classification of Grade B eggs.
	Article 7	Requirements relating to grading of Grade A and washed eggs and information to be displayed on packs.
	Article 8	General requirements relating to marking of eggs.
	Article 9	Requirements relating to marking the date of minimum durability of eggs.
	Article 10	Requirements relating to marking the packing date.
	Article 11	Requirements relating to the determination and marking of the recommended sell by date.
	Article 12	Requirements relating to marking the laying date.
	Article 13	Requirements relating to marking poultry rearing methods.
	Article 14	Requirements relating to marking how laying hens are fed.
	Article 15	Requirements relating to marking the origin of eggs.
	Article 16	Requirements relating to marking imported eggs.
	Article 17	Requirements relating to bands and labels for Grade A eggs.
	Article 18	Requirements relating to bands and labels for eggs intended for the food industry.

(a) 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.

<i>Column 1 Regulations containing Community provisions</i>	<i>Column 2 Provision</i>	<i>Column 3 Subject matter</i>
	Article 19	Requirements relating to bands and labels for industrial eggs.
	Article 20	Requirements relating to eggs marked as “extra” .
	Article 21	Requirements relating to repacking.
	Article 22	Requirements relating to re-grading eggs.
	Article 23	Requirements relating to the re-use of packs for re-grading.
	Article 25	Requirements relating to records to be kept by producers.
	Article 26	Requirements relating to records to be kept by packing centres.
	Article 27	Requirements relating to records to be kept by other operators.
	Article 35	Requirements relating to the minimum net weight of eggs per large pack.
	Article 36	Requirements relating to the quality of packs.
	Article 37	Requirements relating to storage and transport conditions.
Council Regulation (EEC) No. 2782/75(a) on the production and marketing of eggs for hatching and farmyard poultry chicks as amended.		
	Article 5	Requirements relating to marking, transportation and packing of eggs used for chick production.
	Article 6	Requirements relating to the importation of eggs for hatching.
	Article 7	Requirements relating to the keeping of registers by hatcheries.
	Article 8	Restriction on use of incubated eggs withdrawn from the incubator.

(a) 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.6, 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, Commission Regulation (EC) No. 2916/95, O.J. No. L 305, 19.12.1995, p.49.

<i>Column 1 Regulations containing Community provisions</i>	<i>Column 2 Provision</i>	<i>Column 3 Subject matter</i>
	Article 9	Requirements relating to monthly reporting by hatcheries and the collection of statistical data from other establishments.
	Article 11	Requirements relating to packing of chicks.
	Article 12	Requirements relating to the importation of chicks.
	Article 13	Requirements relating to the documentation to accompany batches of eggs for hatching and chicks dispatched.
	Article 14	Requirements relating to legibility and language of particulars and accompanying documents.
	Article 15	Requirements relating to packages for export.
Commission Regulation (EEC) No. 1868/77(a) as amended laying down the detailed rules of application for Regulation (EEC) No. 2782/75	Article 2	Requirements relating to marking eggs for hatching with producer's distinguishing number.
	Article 3	Requirements relating to markings packs of eggs for hatching.

(a) 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.

SCHEDULE 2

Regulation 16

Revocations

The Eggs (Marketing Standards) Regulations 1995	S.I. 1995/1544
The Eggs (Marketing Standards) (Amendment) Regulations 1996	S.I. 1996/1725
The Eggs (Marketing Standards) (Amendment) Regulations 1997	S.I. 1997/1414
The Eggs (Marketing Standards) (Amendment) Regulations 1998	S.I. 1998/1665

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations which apply to Scotland, revoke and replace the Eggs (Marketing Standards) Regulations 1995 (as amended). They make provision for the enforcement and execution of certain specified Community provisions (defined in regulation 2) which relate to marketing standards for shell eggs and to the production and marketing of eggs for hatching and of farmyard poultry chicks. The specified Community provisions are detailed in Schedule 1 to the Regulations.

The principal changes are the inclusion of provisions which—

- (a) authorise livestock grazing on open air runs in certain cases (regulation 6);
- (b) authorise the production of free range and barn eggs in establishments not complying 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 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;
- (c) permit the marking of eggs for hatching in a different manner to that specified in Article 2(1) of Commission Regulation 1868/77, for the purpose of Article 2(2) of that Regulation (regulation 8);
- (d) require the Scottish Ministers to act as the registration authority for the purposes of Article 3 of Council Regulation (EEC) No. 2782/75 (regulation 9); and
- (e) provide a right of appeal against certain decisions of the Scottish Ministers (regulation 13).

The Regulations continue to include provisions which:—

- (a) implement the public health conditions laid down by Council Decision 94/371/EC (regulation 3);
- (b) designate the authorities who are to enforce the specified Community provisions (regulation 4);
- (c) enable an authorised officer of an enforcement authority to impose requirements relating to specified Community provisions (regulation 5);
- (d) enable an enforcement authority to require records to be kept (regulation 10); and
- (e) create offences and prescribe penalties (regulation 11).

These Regulations come into force on 1st July 2005.

A Regulatory Impact Assessment of the effect which this instrument will have on the costs of business has been prepared and placed in the Scottish Parliament Reference Centre.

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