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SCOTTISH STATUTORY INSTRUMENTS

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**2005 No. 505**

**The Food Hygiene (Scotland) Regulations 2005**

**PART 1**

**PRELIMINARY**

**Citation, commencement and extent**

1. These Regulations—
  - (a) may be cited as the Food Hygiene (Scotland) Regulations 2005;
  - (b) shall come into force on 1st January 2006; and
  - (c) extend to Scotland only.

**Interpretation**

- 2.—(1) In these Regulations—
  - “the Act” means the Food Safety Act 1990(1);
  - “the Agency” means the Food Standards Agency;
  - “authorised officer”, in relation to an enforcement authority, means any person appointed by that authority under regulation 5(7);
  - “the Community Regulations” means Regulation 852/2004, Regulation 853/2004 and Regulation 854/2004;
  - “enforcement authority” means the authority which, by virtue of regulation 5, is responsible for enforcing and executing the Hygiene Regulations;
  - “food authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(2);
  - “the Hygiene Regulations” means these Regulations and the Community Regulations;
  - “premises” includes any establishment, any place, vehicle, stall or moveable structure and any ship or aircraft;
  - “Regulation 178/2002”, “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 854/2004” and “Directive 2004/41” have the meanings respectively given to them in Schedule 1; and
  - “specified Community provision” means any provision of the Community Regulations that is specified in column 1 of Schedule 2 and the subject-matter of which is described in column 2 of that Schedule.
- (2) Subject to paragraph (3), any expression other than one defined in paragraph (1) that is used both in these Regulations and in the Act has the meaning it bears in the Act.

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(1) 1990 c. 16.

(2) 1994 (c. 39); section 2 was amended by the Environment Act 1995 (c. 25), Schedule 22, paragraph 232.

(3) Any expression used both in these Regulations and in Regulation 178/2002 or the Community Regulations has the meaning it bears in Regulation 178/2002 or the Community Regulations.

(4) Where, apart from this paragraph, any period of less than 7 days which is specified in these Regulations would include any day which is—

- (a) a Saturday, a Sunday, Christmas Day or Good Friday; or
- (b) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971(3),

that day shall be excluded from the period.

### **Presumptions that food is intended for human consumption**

3.—(1) The following paragraphs apply for the purposes of these Regulations.

(2) Any food commonly used for human consumption shall, if placed on the market or offered, exposed or kept for placing on the market, be presumed, until the contrary is proved, to have been placed on the market or, as the case may be, to have been or to be intended for placing on the market for human consumption.

(3) The following, namely—

- (a) any food commonly used for human consumption which is found on premises used for the preparation, storage, or placing on the market of that food; and
- (b) any article or substance commonly used in the manufacture of food for human consumption which is found on premises used for the preparation, storage or placing on the market of that food,

shall be presumed, until the contrary is proved, to be intended for placing on the market, or for manufacturing food for placing on the market, for human consumption.

(4) Any article or substance capable of being used in the composition or preparation of any food commonly used for human consumption which is found on premises on which that food is prepared shall, until the contrary is proved, be presumed to be intended for such use.

### **Competent authority for the purposes of the Community Regulations**

4.—(1) Subject to paragraph (2), the competent authority for the purposes of the Community Regulations is the Agency.

(2) The Agency may, as respects any of its functions as competent authority under paragraph (1) which may be delegated in terms of the Community Regulations—

- (a) delegate any of those functions to any person or persons; or
- (b) arrange for any of those functions to be carried out by any person or persons.

(3) Before delegating or making an arrangement in accordance with paragraph (2), the Agency shall consult the person or persons to whom any delegation, or with whom any arrangement, is to be made and shall publish a notice containing the details and operative date of the delegation or arrangement in the Edinburgh Gazette at least 7 days before that operative date.

(4) Where, in accordance with paragraph (2), the Agency has—

- (a) delegated any of its functions; or
- (b) made an arrangement in relation to any of its functions,

the Agency may, subject to paragraph (5)—

- (c) withdraw that delegation; or

(d) vary, suspend or cancel that arrangement,  
in whole or in part.

(5) Paragraph (3) shall apply to any withdrawal of a delegation or variation, suspension or cancellation of an arrangement made by the Agency under paragraph (4) as it applies to a delegation or arrangement made by it in accordance with paragraph (2).

### **Enforcement**

5.—(1) In respect of any food business operator to whose operations Regulation 852/2004 applies but Regulation 853/2004 does not apply—

- (a) the Agency shall enforce and execute the Hygiene Regulations in so far as the operator concerned is carrying out primary production and those associated operations listed in paragraph 1 of Part AI of Annex I to Regulation 852/2004 other than the associated operations described in sub paragraphs (a) and (c) of that paragraph in so far as they concern wild game; and
- (b) subject to paragraph (5), the food authority in whose area the food business operator carries out its operations shall enforce and execute the Hygiene Regulations in so far as the operator concerned is carrying out operations which are not enforced and executed by the Agency pursuant to sub paragraph (a).

(2) In respect of any food business operator to whose operations both Regulation 852/2004 and Regulation 853/2004 apply—

- (a) the Agency shall enforce and execute the Hygiene Regulations in so far as the operator concerned is carrying out operations in relation to the following establishments and activities:
  - (i) slaughterhouses;
  - (ii) game handling establishments;
  - (iii) cutting plants placing fresh meat on the market; and
  - (iv) activities in respect of eggs to which Chapter I of Section X of Annex III to Regulation 853/2004 applies; and
- (b) subject to paragraph (5), the food authority in whose area the food business operator carries out its operations shall enforce and execute the Hygiene Regulations in so far as the operator concerned is carrying out operations in relation to any establishment or activity that is not specified in sub paragraph (a).

(3) Subject to paragraph (5), in respect of—

- (a) collection centres and tanneries supplying raw material for the production of gelatine intended for human consumption pursuant to paragraph 5 of Chapter I of Section XIV of Annex III to Regulation 853/2004; and
- (b) collection centres and tanneries supplying raw material for the production of collagen intended for human consumption pursuant to paragraph 5 of Chapter I of Section XV of Annex III to Regulation 853/2004,

the food authority in whose area the collection centre or tannery concerned is situated shall enforce and execute the Hygiene Regulations.

(4) Each food authority shall enforce and execute these Regulations in its area in relation to the matters regulated by Schedules 3 to 6.

(5) The Agency may, if it considers it appropriate to do so, enforce and execute—

- (a) the Hygiene Regulations in relation to any of the establishments, activities, operations or matters referred to in paragraphs (1)(b), (2)(b) and (3)(a) and (b); and

(b) these Regulations in relation to the matters regulated by Schedules 3 to 6.

(6) Before exercising its option to enforce and execute the Hygiene Regulations or these Regulations under paragraph (5), the Agency shall consult the enforcement authority which would otherwise have a duty to carry out such enforcement and execution.

(7) The Agency and any food authority may in writing appoint as authorised officers, either generally or specially, such persons (whether or not officers of the Agency or the authority) as it considers necessary to act in matters arising under the Hygiene Regulations.

## PART 2

### MAIN PROVISIONS

#### Hygiene improvement notices

6.—(1) If an authorised officer of an enforcement authority has reasonable grounds for believing that a food business operator is failing to comply with the Hygiene Regulations, that officer may by a notice served on the food business operator (in these Regulations referred to as a “hygiene improvement notice”)—

- (a) state the officer’s grounds for believing that the food business operator is failing to comply with the Hygiene Regulations;
- (b) specify the matters which constitute the food business operator’s failure to comply;
- (c) specify the measures which, in the officer’s opinion, the food business operator must take in order to secure compliance; and
- (d) require the food business operator to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.

(2) Any person who fails to comply with a hygiene improvement notice is guilty of an offence.

#### Hygiene prohibition orders

7.—(1) If—

- (a) a food business operator is convicted of an offence under these Regulations; and
- (b) the court by or before which the food business operator is so convicted is satisfied that the health risk condition is fulfilled with respect to the food business concerned,

the court shall by an order impose the appropriate prohibition.

(2) The health risk condition is fulfilled with respect to any food business if any of the following involves risk of injury to health (including any impairment, whether permanent or temporary), 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; and
- (c) the state or condition of any premises or equipment used for the purposes of the business.

(3) The appropriate prohibition is—

- (a) in a case falling within paragraph (2)(a), a prohibition on the use of the process or treatment for the purposes of the business;

- (b) in a case falling within paragraph (2)(b), 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; and
- (c) in a case falling within paragraph (2)(c), a prohibition on the use of the premises or equipment for the purposes of any food business.

(4) If–

- (a) a food business operator is convicted of an offence under these Regulations; and
- (b) the court by or before which the food business operator is so convicted thinks it proper to do so in all the circumstances of the case,

the court may, by an order, impose a prohibition on the food business operator participating in the management of any food business, or any food business of a class or description specified in the order.

(5) As soon as practicable after the making of an order under paragraph (1) or (4) (in these Regulations referred to as a “hygiene prohibition order”), the enforcement authority shall–

- (a) serve a copy of the order on the relevant food business operator; and
- (b) in the case of an order made under paragraph (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as they consider appropriate,

and any person who knowingly contravenes a hygiene prohibition order is guilty of an offence.

(6) A hygiene prohibition order shall cease to have effect–

- (a) in the case of an order made under paragraph (1), on the issue by the enforcement authority of a certificate to the effect that it is satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business; and
- (b) in the case of an order made under paragraph (4), on the giving by the court of a direction to that effect.

(7) The enforcement authority shall issue a certificate under paragraph (6)(a) within 3 days of it being satisfied as mentioned in that paragraph; and on an application by the food business operator for such a certificate, the authority shall–

- (a) determine, as soon as is reasonably practicable and in any event within 14 days, whether or not it is so satisfied; and
- (b) if it determines that it is not so satisfied, give notice to the food business operator of the reasons for that determination.

(8) The court shall give a direction under paragraph (6)(b) if, on an application by the food business operator, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the food business operator since the making of the order; but no such application shall be entertained if it is made–

- (a) within 6 months of the making of the hygiene prohibition order; or
- (b) within 3 months of the making by the food business operator of a previous application for such a direction.

(9) Where the sheriff makes an order under regulation 8(2) with respect to any food business, paragraph (1) of this regulation shall apply as if the food business operator had been convicted by the sheriff of an offence under these Regulations.

(10) Where the commission of an offence by a food business operator leads to the conviction of another person pursuant to regulation 10, paragraph (4) of this regulation shall apply in relation to that

other person as it applies in relation to the food business operator and any reference in paragraph (5) or (8) to the food business operator shall be construed accordingly.

### **Hygiene emergency prohibition notices and orders**

8.—(1) If an authorised officer of an enforcement authority is satisfied that the health risk condition is fulfilled with respect to any food business, the officer may, by a notice served on the relevant food business operator (in these Regulations referred to as a “hygiene emergency prohibition notice”), impose the appropriate prohibition.

(2) If the sheriff is satisfied, on the application of such an officer, that the health risk condition is fulfilled with respect to any food business, the sheriff shall, by an order (in these Regulations referred to as a “hygiene emergency prohibition order”), impose the appropriate prohibition.

(3) Such an officer shall not apply for a hygiene emergency prohibition order unless, at least 1 day before the date of the application, the officer has served notice on the relevant food business operator of the officer’s intention to apply for the order.

(4) Paragraphs (2) and (3) of regulation 7 shall apply for the purposes of this regulation as they apply for the purposes of that regulation, but as if the reference in paragraph (2) to risk of injury to health were a reference to imminent risk of injury.

(5) As soon as practicable after the service of a hygiene emergency prohibition notice, an authorised officer of an enforcement authority shall affix a copy of the notice in a conspicuous position on such premises used for the purposes of the food business as the officer considers appropriate; and any person who knowingly contravenes a hygiene emergency prohibition notice is guilty of an offence.

(6) As soon as practicable after the making of a hygiene emergency prohibition order, an authorised officer of an enforcement authority shall—

- (a) serve a copy of the order on the relevant food business operator; and
- (b) affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as the officer considers appropriate,

and any person who knowingly contravenes a hygiene emergency prohibition order is guilty of an offence.

(7) A hygiene emergency prohibition notice shall cease to have effect—

- (a) if no application for a hygiene emergency prohibition order is made within the period of 5 days beginning with the service of the notice, at the end of that period; or
- (b) if such an application is so made, on the determination or abandonment of the application.

(8) A hygiene emergency prohibition notice or a hygiene emergency prohibition order shall cease to have effect on the issue by the enforcement authority of a certificate to the effect that it is satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business.

(9) The enforcement authority shall issue a certificate under paragraph (8) within 3 days of it being satisfied as mentioned in that paragraph; and on an application by the food business operator for such a certificate, the authority shall—

- (a) determine as soon as is reasonably practicable and in any event within 14 days whether or not it is so satisfied; and
- (b) if it determines that it is not so satisfied, give notice to the food business operator of the reasons for that determination.

(10) Where a hygiene emergency prohibition notice is served on a food business operator, the enforcement authority shall compensate the food business operator in respect of any loss suffered by reason of compliance by the food business operator with the notice unless—

- (a) an application for a hygiene emergency prohibition order is made within the period of 5 days beginning with the service of the notice; and
- (b) the sheriff is satisfied, on the hearing of the application, that the health risk condition was fulfilled with respect to the food business at the time when the notice was served,

and any disputed question as to the right to or the amount of any compensation payable under this paragraph shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

### **Remedial action notices and detention notices**

**9.**—(1) Where it appears to an authorised officer of an enforcement authority that in respect of an establishment subject to approval under Article 4(2) of Regulation 853/2004—

- (a) any of the requirements of the Hygiene Regulations is being breached; or
- (b) inspection under the Hygiene Regulations is being hampered,

the authorised officer may, by a notice served on the relevant food business operator or the operator’s duly authorised representative (in these Regulations referred to as a “remedial action notice”)—

- (c) prohibit the use of any equipment or any part of the establishment specified in the notice;
- (d) impose conditions upon or prohibit the carrying out of any process; or
- (e) require the rate of operation to be reduced to such extent as is specified in the notice, or to be stopped completely.

(2) A remedial action notice shall be served as soon as practicable and shall state why it is being served.

(3) If a remedial action notice is served under paragraph (1)(a), it shall specify the breach and the action needed to remedy it.

(4) An authorised officer of the enforcement authority whose authorised officer served the remedial action notice shall, as soon as the officer is satisfied that such action has been taken, withdraw the notice by a further notice in writing served on the food business operator or the operator’s duly authorised representative.

(5) An authorised officer of an enforcement authority may, at an establishment subject to approval under Article 4(2) of Regulation 853/2004, by a notice served on the relevant food business operator or the operator’s duly authorised representative (in this regulation referred to as a “detention notice”) require the detention of any animal or food for the purposes of examination (including the taking of samples).

(6) An authorised officer of the enforcement authority whose officer served the original detention notice shall, as soon as satisfied that the animal or food need no longer be detained, withdraw the notice by a further notice in writing served on the food business operator or the operator’s duly authorised representative.

(7) Any person who fails to comply with a remedial action notice or a detention notice is guilty of an offence.

### **Offences due to fault of another person**

**10.** Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person is guilty of the offence; and a person may be convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

**Defence of due diligence**

**11.**—(1) In any proceedings for an offence under these Regulations, it shall, subject to paragraph (2), be a defence to prove that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the accused or by a person under the accused's control.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the accused shall not, without leave of the court, be entitled to rely on that defence unless at the earlier of—

- (a) a date 7 days before the trial diet (not being a notional trial diet); or
- (b) a date 28 days after the first appearance of that person, before a court in connection with the alleged offence,

the accused has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in the possession of the accused.

**PART 3****ADMINISTRATION AND ENFORCEMENT****Procurement of samples**

**12.** An authorised officer of an enforcement authority may for the purpose of the performance by the authority of its functions under the Hygiene Regulations—

- (a) purchase a sample of any food, or any substance capable of being used in the preparation of food;
- (b) take a sample of any food, or any such substance, which—
  - (i) appears to the officer to be intended for placing on the market or to have been placed on the market, for human consumption; or
  - (ii) is found by the officer on or in any premises which the officer is authorised to enter by or under regulation 14;
- (c) take a sample from any food source, or a sample of any contact material, which is found on or in any such premises; and
- (d) take a sample of any article or substance which is found on or in any such premises and which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of these Regulations.

**Analysis etc. of samples**

**13.**—(1) An authorised officer of an enforcement authority who has procured a sample under regulation 12 shall—

- (a) if that officer considers that the sample should be analysed, submit it to be analysed—
  - (i) by the public analyst for the area in which the sample was procured, or
  - (ii) by the public analyst for the area which consists of or includes the area of the authority;
- (b) if that officer considers that the sample should be examined, submit it to be examined by a food examiner.



(2) A person, other than such an officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it—

- (a) to be analysed by the public analyst for the area in which the purchase was made; or
- (b) to be examined by a food examiner.

(3) If, in any case where a sample is proposed to be submitted for analysis under this regulation, the office of public analyst for the area in question is vacant, the sample shall be submitted to the public analyst for some other area.

(4) If, in any case where a sample is proposed to be or is submitted for analysis or examination under this regulation, the food analyst or examiner is for any reason unable to perform the analysis or examination, the sample shall be submitted or, as the case may be, sent by the food analyst or examiner to such other food analyst or examiner as that person may determine.

(5) A food analyst or examiner shall analyse or examine as soon as practicable any sample submitted or sent to that person under this regulation, but may, except where—

- (a) that person is the public analyst for the area in question; and
- (b) the sample is submitted for analysis by an authorised officer of an enforcement authority, demand in advance the payment of such reasonable fee as the food analyst or examiner may require.

(6) Any food analyst or examiner who has analysed or examined a sample shall give to the person by whom it was submitted a certificate specifying the result of the analysis or examination.

(7) Any certificate given by a food analyst or examiner under paragraph (6) shall be signed by the food analyst or examiner, but the analysis or examination may be made by any person acting under the direction of the food analyst or examiner.

(8) In any proceedings under these Regulations, the production by one of the parties—

- (a) of a document purporting to be a certificate given by a food analyst or examiner under paragraph (6); or
- (b) of a document supplied to that party by the other party as being a copy of such a certificate, shall be sufficient evidence of the facts stated in it unless, in a case falling within sub paragraph (a), the other party requires that the food analyst or examiner shall be called as a witness.

(9) In this regulation where two or more public analysts are appointed for any area, any reference in these Regulations to the public analyst for that area shall be construed as a reference to either or any of them.

### **Powers of entry**

**14.—**(1) An authorised officer of an enforcement authority other than the Agency shall, on producing, if so required, some duly authenticated document showing the officer's authority, have a right at all reasonable hours—

- (a) to enter any premises within the authority's area for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of the Hygiene Regulations;
- (b) to enter any premises, whether within or outside the authority's area, for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that area; and
- (c) to enter any premises for the purpose of the performance by the authority of its functions under the Hygiene Regulations,

but subject to paragraph (3) admission to any premises used only as a private dwelling-house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(2) An authorised officer of the Agency shall, on producing if so required some duly authenticated document showing the officer's authority, have a right at all reasonable hours to enter any premises for the purpose of—

- (a) ascertaining whether there is or has been on the premises any contravention of the provisions of the Hygiene Regulations;
- (b) ascertaining whether there is on the premises any evidence of any such contravention; and
- (c) the performance by the Agency of its functions under the Hygiene Regulations,

but subject to paragraph (3) admission to any premises used only as a private dwelling—house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(3) If the sheriff, a magistrate or a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any such purpose as is mentioned in paragraph (1) or (2) and either—

- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the sheriff, magistrate or justice may by signed warrant authorise the authorised officer to enter the premises, if need be by reasonable force.

(4) Every warrant granted under this regulation shall continue in force for a period of 1 month.

(5) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may be accompanied by such other persons as the officer considers necessary, and on leaving any unoccupied premises entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as they were found.

(6) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are stored in any electronic form—

- (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 such assistance as the officer may reasonably require.

(7) Any officer exercising any power conferred by paragraph (6) may—

- (a) seize and detain any records which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of these Regulations; and
- (b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

(8) If any person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any person any information obtained on the premises with regard to any trade secret, that person is, unless the disclosure is made in the performance of that person's duty, guilty of an offence.

(9) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981(4), to enter any premises—

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(4) 1981 c. 22.

- (a) on which an animal or bird affected with any disease to which that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

### **Obstruction etc. of officers**

**15.**—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of the Hygiene Regulations; or
- (b) without reasonable cause, fails to give to any person acting in the execution of the Hygiene Regulations any assistance or information which that person may reasonably require for the performance of functions under the Hygiene Regulations,

is guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

- (a) furnishes information which that person knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular,

is guilty of an offence.

(3) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

### **Time limit for commencement of prosecutions**

**16.**—(1) No prosecution for an offence under these Regulations which is punishable under regulation 17(2) shall be begun after the expiry of—

- (a) 3 years from the commission of the offence; or
- (b) 1 year from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings came to the knowledge of the prosecutor,

whichever is the earlier.

(2) For the purposes of this regulation, 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.

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

### **Offences and penalties**

**17.**—(1) Subject to paragraph (4), any person who contravenes or fails to comply with any of the specified Community provisions is guilty of an offence.

(2) Subject to paragraph (3), a person guilty of an offence under these Regulations is liable—

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

(3) A person guilty of an offence under regulation 15 is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

(4) A person shall be considered not to have contravened or failed to comply with Article 4(2) of Regulation 852/2004 as read with paragraph 4 of Chapter IV of Annex II to that Regulation (bulk

foodstuffs in liquid, granulate or powder form to be transported in receptacles and/or containers/ tankers reserved for the transport of foodstuffs) provided the requirements of Schedule 3 are complied with.

### **Offences by bodies corporate**

**18.**—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

that person as well as the body corporate is to be deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1)(a) “director”, in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

### **Offences by Scottish partnerships**

**19.** Where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, that partner as well as the partnership is to be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

### **Right of appeal**

**20.**—(1) Any person who is aggrieved by—

- (a) a decision of an authorised officer of an enforcement authority to serve a hygiene improvement notice;
- (b) a decision of an enforcement authority to refuse to issue a certificate under regulations 7(6) or 8(8); or
- (c) a decision of an authorised officer of an enforcement authority to serve a remedial action notice,

may appeal to the sheriff.

(2) An appeal to the sheriff under paragraph (1) shall be by way of summary application.

(3) The period within which an appeal under paragraph (1) may be brought shall be—

- (a) 1 month from the date on which notice of the decision was served on the person desiring to appeal; or
- (b) in the case of an appeal against a decision to issue a hygiene improvement notice, the period specified in sub paragraph (a) or, if it is shorter, the period specified in the notice pursuant to regulation 6(1)(d).

(4) Where an appeal under paragraph (1)(b) is granted, the authority concerned shall give effect to the determination of the sheriff.

### **Appeal to Court of Session**

**21.** A person who is aggrieved by—

- (a) the dismissal of an appeal under regulation 20(1); or

(b) a decision to make a hygiene prohibition order or a hygiene emergency prohibition order, may appeal to the Court of Session.

### **Appeals against hygiene improvement notices and remedial action notices**

**22.**—(1) On an appeal against a hygiene improvement notice or a remedial action notice, the sheriff or the Court may cancel or affirm the notice and, if the notice is affirmed, may do so either in its original form or with such modifications as the sheriff or the Court may in the circumstances think fit.

(2) Where any period specified in a hygiene improvement notice pursuant to regulation 6(1)(d) would otherwise include any day on which an appeal against that notice is pending, that day shall be excluded from that period.

(3) Any appeal shall be regarded as pending for the purposes of paragraph (2) until it is finally disposed of or is withdrawn.

### **Application of section 9 of the Food Safety Act 1990**

**23.** Section 9 of the Act (inspection and seizure of suspected food)(**5**) shall apply for the purposes of these Regulations with the modification that it shall apply in relation to an authorised officer of an enforcement authority as it applies in relation to an authorised officer of a food authority.

## **PART 4**

### **MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS**

#### **Power to issue codes of recommended practice**

**24.**—(1) For the guidance of food authorities, the Scottish Ministers may issue codes of recommended practice as regards the execution and enforcement of the Hygiene Regulations and any such code shall be laid before the Scottish Parliament after being issued.

(2) The Agency may, after consulting the Scottish Ministers, give a food authority a direction requiring it to take any specified steps in order to comply with a code issued under this regulation.

(3) In exercise of the functions conferred on it by or under the Hygiene Regulations, every food authority—

(a) shall have regard to any relevant provision of any such code; and

(b) shall comply with any direction which is given under this regulation and requires it to take any specified steps in order to comply with such a code.

(4) Any direction under paragraph (2) shall, on the application of the Agency, be enforceable by an order of the Court of Session under section 45 of the Court of Session Act 1988(**6**).

(5) The Agency shall consult the Scottish Ministers before making an application under paragraph (4).

(6) Before issuing any code under this regulation, the Scottish Ministers shall have regard to any relevant advice given by the Agency.

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(5) Section 9 was amended by the General Food Regulations 2004 (S.I.2004/3279) and section 1(1) and (2) (definition of “food”) was substituted by the Food Safety Act 1990 (Amendment) Regulations 2004 (S.I. 2004/2990).

(6) 1988 c. 36.

**Protection of officers acting in good faith**

**25.**—(1) An officer of an enforcement authority is not personally liable in respect of any act done by that officer—

- (a) in the execution or purported execution of the Hygiene Regulations; and
- (b) within the scope of the officer's duties,

if the officer did that act in the honest belief that the officer's duties under the Hygiene Regulations required or entitled the doing of it.

(2) Nothing in paragraph (1) shall be construed as relieving any enforcement authority from any liability in respect of the acts of its officers.

(3) Where an action has been brought against an officer of an enforcement authority in respect of an act done by that officer—

- (a) in the execution or purported execution of the Hygiene Regulations; but
- (b) outside the scope of the officer's duties,

the authority may indemnify the officer against the whole or a part of any damages which the officer has been ordered to pay or any costs which the officer may have incurred if it is satisfied that the officer honestly believed that the act complained of was within the scope of the officer's duties.

(4) A public analyst appointed by a food authority shall be treated for the purposes of this regulation as being an officer of the authority, whether or not the analyst's appointment is a whole time one.

**Revocation and suspension of designations and appointments**

**26.**—(1) Subject to paragraphs (2) and (3), the Agency may at any time revoke or suspend—

- (a) the appointment of an official veterinarian;
- (b) the designation of an approved veterinarian; or
- (c) the appointment of an official auxiliary,

if it appears to the Agency that the person in question is unfit to perform any of the functions of that post under the Hygiene Regulations.

(2) Where the Agency revokes or suspends a designation or appointment under paragraph (1), the Agency shall, as soon as practicable, give to the person whose designation or appointment has been revoked or suspended a notice in writing of the reasons for the revocation or suspension and shall afford that person an opportunity of—

- (a) making representations in writing to the Agency with regard to the revocation or suspension; or
- (b) being heard by a person nominated by the Agency for the purpose pursuant to paragraph (5) (a).

(3) A notice given under paragraph (2) shall inform the person to whom it is given—

- (a) of that person's right to make representations in writing;
- (b) of the manner in which and the time (not being less than 21 days from the giving of the notice) within which such representations may be made;
- (c) of that person's right to be heard; and
- (d) of the manner in which and the time (not being less than 21 days from the giving of the notice) within which an application for an opportunity to be heard may be made.

(4) In the event of the person whose designation or appointment has been revoked or suspended making any representations (whether orally or in writing) under paragraph (2) the Agency shall

reconsider whether that person is unfit to perform any of the functions of the post they hold under the Hygiene Regulations and shall, as soon as practicable, reconsider its decision to revoke or suspend the designation or appointment under paragraph (1) in the light of those representations.

- (5) Where a person requests the opportunity to be heard pursuant to paragraph (2)(b)–
- (a) the Agency shall nominate a person to determine the matter from the list established under paragraph (6);
  - (b) the person so nominated shall serve a notice on the person requesting the opportunity to be heard and the Agency informing them of the time (not being less than 21 days from the giving of the notice) of the hearing; and
  - (c) the person so nominated shall, within 21 days of the hearing, notify the person requesting the opportunity to be heard and the Agency of the determination made.
- (6) The Agency shall establish and maintain a list of persons who may be nominated for the purposes of this regulation and shall consult those organisations appearing to it to represent official veterinarians, approved veterinarians and official auxiliaries before including any person on the list.

### **Food which has not been produced, processed or distributed in accordance with the Hygiene Regulations**

27.—(1) On an inspection of any food, an authorised officer of an enforcement authority may certify that it has not been produced, processed or distributed in compliance with the Hygiene Regulations.

(2) Where any food is certified as mentioned in paragraph (1) it shall be treated for the purposes of section 9 of the Act as failing to comply with food safety requirements.

(3) Where any food certified as mentioned in paragraph (1) is part of a batch, lot or consignment of food of the same class or description, all the food in the batch, lot or consignment shall, until it is proved that it has been produced, processed or distributed in compliance with the Hygiene Regulations, be treated for the purposes of paragraph (2) as having been so certified.

### **Service of documents**

28.—(1) Any document which is required or authorised under the Hygiene Regulations to be served on a food business operator may be served–

- (a) by delivering it to that person;
- (b) in the case of an incorporated company or body, by delivering it to its secretary at its registered or principal office, or by sending the document in a prepaid letter addressed to its secretary at that office; or
- (c) in the case of any other food business operator, by leaving it or sending it in a prepaid letter addressed to that person at that person’s usual or last known residence.

(2) Where a document is to be served on a food business operator under the Hygiene Regulations and it is not reasonably practicable to ascertain the name and address of the person on whom it should be served, or the premises of the food business operator are unoccupied, the document may be served by addressing it to the food business operator concerned in the capacity of occupier of those premises (naming them), and–

- (a) by delivering it to some other person at the premises; or
- (b) if there is no other person at the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

**Bulk transport in sea-going vessels of liquid oils or fats and of raw sugar**

29. Schedule 3 (bulk transport in sea-going vessels of liquid oils or fats or of raw sugar) shall have effect.

**Temperature control requirements**

30. Schedule 4 (temperature control requirements) shall have effect.

**Direct supply by the producer of small quantities of meat from poultry and lagomorphs slaughtered on the farm**

31. Schedule 5 (direct supply by the producer of small quantities of meat from poultry and lagomorphs slaughtered on the farm) shall have effect.

**Restrictions on the placing on the market of raw milk and raw cream intended for direct human consumption**

32. Schedule 6 (restrictions on the placing on the market of raw milk and raw cream intended for direct human consumption) shall have effect.

**Amendment of the Egg (Marketing Standards) (Enforcement) (Scotland) Regulations 2005**

33. For regulation 4(3) (enforcement authorities) of the Egg (Marketing Standards) (Enforcement) (Scotland) Regulations 2005(7) substitute—

“The Scottish Ministers shall execute and enforce the specified Community provisions insofar as they do not relate to the matters referred to in paragraph (1).”.

**Revocations**

34. The instruments specified in Column 1 of Schedule 7 are revoked to the extent specified in Column 3 of that Schedule.

St Andrew’s House, Edinburgh  
7th October 2005

*ANDREW P KERR*  
A member of the Scottish Executive