

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which extend to Scotland only, provide for the execution and enforcement there of—

- (a) Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs (O.J. No. L 139, 30.4.04, p.1; the revised text of this Regulation is now set out in a Corrigendum, O.J. No. L 226, 25.6.04, p.3);
- (b) Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin (O.J. No. L 139, 30.4.04, p.55; the revised text of this Regulation is now set out in a Corrigendum, O.J. No. L 226, 25.6.04, p.22) as read with Directive 2004/41/EC, (O.J. No. L 157 30.4.04, p.33; the revised text of this Directive is now set out in a Corrigendum, O.J. No. L 195, 2.6.04, p. 12); and
- (c) Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (O.J. No. L 155, 30.4.04, p.206; the revised text of this Regulation is now set out in a Corrigendum, O.J. No. L 226, 25.6.04, p.83) as amended by Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (O.J. No. L 165, 30.4.04, p.1; the revised text of this Regulation is now set out in a Corrigendum, O.J. No. L 191, 28.5.04, p.1) as read with Directive 2004/41/EC,

referred in these Regulations as “the Community Regulations”.

These Regulations—

- (a) create certain presumptions that, for the purposes thereof, specified food is intended for human consumption (regulation 3);
- (b) provide that the Food Standards Agency is the competent authority for the purposes of the Community Regulations and make provision for the Agency to delegate that function to, or enter into an arrangement concerning that function with, any other enforcement authority (regulation 4);
- (c) make provision for the enforcement and execution of these Regulations and of the Community Regulations including the appointment of authorised officers (regulation 5);
- (d) provide for the following enforcement measures to be available in respect of a food business operator—
  - (i) hygiene improvement notices (regulation 6);
  - (ii) hygiene prohibition orders (regulation 7);
  - (iii) hygiene emergency prohibition notices and orders (regulation 8), and

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- (iv) in respect of establishments subject to approval under Regulation (EC) No. 853/2004 remedial action notices and detention notices (regulation 9);
- (e) provide that where the commission of an offence under them is due to the act or default of some other person that other person is guilty of the offence (regulation 10);
- (f) provide that in proceedings for an offence under them it is a defence for the accused to prove that all reasonable precautions were taken and all due diligence exercised so as to avoid the commission of the offence (regulation 11);
- (g) provide for the procurement and analysis of samples (regulations 12 and 13);
- (h) provide powers of entry for authorised officers of an enforcement authority (regulation 14);
- (i) create the offence of obstructing an officer (regulation 15);
- (j) provide a time limit for bringing prosecutions (regulation 16);
- (k) provide that a person who contravenes or fails to comply with specified provisions of Regulation (EC) No. 852/2004 or Regulation (EC) No. 853/2004 is guilty of an offence (regulation 17(1));
- (l) provide penalties for offences (regulation 17(2) and (3));
- (m) provide that a person is considered not to have contravened or failed to comply with a specified provision of Regulation (EC) No. 852/2004 (requirement for 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 (regulation 17(4));
- (n) provide that where an offence under them 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, an officer of the body corporate or a person purporting to act as such that person as well as the body corporate is deemed to be guilty of that offence and may be proceeded against and punished accordingly (regulation 18);
- (o) provide that where an offence under them 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 deemed to be guilty of that offence and may be proceeded against and punished accordingly (regulation 19);
- (p) provide rights of appeal in respect of hygiene improvement notices, remedial action notices, hygiene prohibition orders and hygiene emergency prohibition orders (regulations 20 to 22);
- (q) provide for the application of section 9 of the Food Safety Act 1990 (1990 c. 16) (regulation 23);
- (r) provide for the issue to food authorities by the Scottish Ministers of codes of recommended practice as regards the execution and enforcement of these Regulations and the Community Regulations (regulation 24);
- (s) provide for the protection of officers acting in good faith (regulation 25);
- (t) provide for the revocation or suspension of the designation or as the case may be appointment of specified officials (regulation 26);
- (u) provide that when an authorised officer of an enforcement authority has certified that any food has not been produced, processed or distributed in compliance with these Regulations and the Community Regulations, it shall be treated for the purposes of section 9 of the Food Safety Act 1990 as failing to comply with food safety requirements (regulation 27);

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- (v) provide for the service of documents (regulation 28);
- (w) provide that the provisions set out in the following Schedules have effect—
  - (i) Schedule 3 (bulk transport in sea-going vessels of liquid oils or fats and of raw sugar (regulation 29));
  - (ii) Schedule 4 (temperature control requirements) (regulation 30);
  - (iii) Schedule 5 (direct supply by the producer of small quantities of meat from poultry and lagomorphs slaughtered on the farm) (regulation 31), and
  - (iv) Schedule 6 (restrictions on the placing on the market of raw milk and raw cream intended for direct human consumption) (regulation 32)and constitute failure to comply with those Schedules a criminal offence;
- (x) make a consequential amendment (regulation 33); and
- (y) provide for the revocation of specified instruments in so far as they extend to Scotland (regulation 34).

A full regulatory impact assessment, which includes a compliance cost assessment of the effect which these Regulations will have on business costs has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency (Scotland), 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.

### **Changes to legislation:**

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### **Changes and effects yet to be applied to :**

- Sch. 1 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 2 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 1 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 2 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 3 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 4 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 5 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 6 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 7 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 8 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 9 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 10 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 11 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 12 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 13 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 3 para. 14 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 4 para. 1 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 4 para. 2 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 4 para. 3 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 4 para. 4 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 5 para. 1 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 5 para. 2 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 5 para. 3 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
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- Sch. 6 para. 2 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 6 para. 3 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Sch. 7 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- Regulations applied by [S.S.I. 2005/616 reg. 13\(7\)](#)
- Regulations revoked by [S.S.I. 2006/3 Sch. 8](#)
- reg. 1 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- reg. 2 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- reg. 3 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- reg. 4 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- reg. 5 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
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- reg. 13 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- reg. 14 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- reg. 15 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- reg. 16 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- reg. 17 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- reg. 18 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- reg. 19 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)
- reg. 20 coming into force by [S.S.I. 2005/505 reg. 1\(a\)](#)

- reg. 21 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 22 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 23 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 24 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 25 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 26 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 27 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 28 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 29 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 30 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 31 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 32 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 33 coming into force by S.S.I. 2005/505 reg. 1(a)
- reg. 34 coming into force by S.S.I. 2005/505 reg. 1(a)