
SCOTTISH STATUTORY INSTRUMENTS

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.

(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.