
EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, revoke and re-enact with changes the Food Hygiene (Scotland) Regulations 2005 (S.S.I. 2005/505).

The Food Hygiene (Scotland) Regulations 2005 provided for the execution and enforcement of certain Community instruments, referred to in those Regulations as “the Community Regulations”. The Community instruments in question are those specified in paragraphs (a) to (c) below.

The Community instruments are—

- (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; “Regulation 852/2004”);
- (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);
- (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);

Since then the Commission have published the following instruments which are also implemented by these Regulations—

- (d) Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs (O.J. No. L338, 22.12.05, p.1);
- (e) Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004, for the organisation of official controls under Regulations (EC) Nos. 854/2004 and 882/2004, derogating from Regulation (EC) No. 852/2004 and amending Regulations (EC) Nos. 853/2004 and 854/2004 (O.J. No. L 338, 22.12.05, p.27);
- (f) Commission Regulation (EC) No. 2075/2005 laying down specific rules on official controls for *Trichinella* in meat (O.J. No. L 338, 22.12.05, p.60); and
- (g) Commission Regulation (EC) No. 2076/2005 laying down transitional arrangements for the implementation of Regulations (EC) Nos. 853/2004, 854/2004 and 882/2004 of the European Parliament and of the Council and amending Regulations (EC) Nos. 853/2004 and 854/2004 (O.J. No. L 338, 22.12.05, p.83).

The effect of the instruments specified in paragraphs (d) to (g) above is to modify the Community instruments specified in paragraphs (a) to (c) above which require to be read along with them. The changes made by these Regulations are—

- (a) to include definitions of the instruments specified in paragraphs (d) to (g) above (regulation 2(1) and Schedule 1);
- (b) to change the enforcement arrangements (regulation 5);
- (c) to extend the scope of Schedule 5 (direct supply by the producer of small quantities of meat from poultry or lagomorphs slaughtered on the farm) following Article 3 of Commission Regulation (EC) No. 2076/2005 laying down transitional arrangements for

Status: This is the original version (as it was originally made).

the implementation of Regulations (EC) Nos. 853/2004, 854/2004 and 882/2004 of the European Parliament and of the Council and amending Regulations (EC) Nos. 853/2004 and 854/2004 (O.J. No. L 338, 22.12.05, p.83); and

- (d) consequential amendments to other instruments, including minor corrections.

These Regulations—

- (a) create certain presumptions that, for the purposes of these Regulations, 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 execution and enforcement 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
 - (iv) remedial action notices and detention notices (regulation 9);
- (e) provide that where the commission 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 (regulation 10);
- (f) provide that in proceedings for an offence under these Regulations 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 the Community Regulations set out in Schedule 2 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 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, an officer of the body corporate or a person purporting to act as such that officer or 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 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 deemed to be guilty of that offence and may be proceeded against and punished accordingly (regulation 19);
- (p) provide a right of appeal in respect of—
 - (i) the service of a hygiene improvement notice or a remedial action notice,
 - (ii) the refusal of an enforcement authority to issue a certificate under specified provisions to the effect that they are satisfied that a food business operator has taken measures to secure that the health risk condition is no longer fulfilled with respect to the food business concerned, and
 - (iii) the making of a hygiene prohibition order or a hygiene emergency prohibition order (regulations 20 to 22);
 - (q) provide for the application, for the purposes of these Regulations, of section 9 of the Food Safety Act 1990 (1990 c. 16), but with a specified modification (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);
 - (v) provide for the service of documents (regulation 28);
 - (w) provide for the requirements set out in the following Schedules:
 - (i) Schedule 3 (bulk transport in sea-going vessels of liquid oils or fats and the bulk transport by sea 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),
failure to comply with which is a criminal offence;
 - (x) make consequential amendments to specified instruments (regulation 33 and Schedule 7);
 - (y) provide for the revocation of specified instruments to the extent specified (regulation 34 and Schedule 8); and
 - (z) provide for the saving of notices served under the Food Hygiene (Scotland) Regulations 2005 (regulation 35).

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), St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.