
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 314

**The Plastic Materials and Articles in Contact
with Food (Scotland) Regulations 2006**

PART 3

Execution and Enforcement

Enforcement

14. Each food authority shall execute and enforce—

- (a) the provisions of Regulation 1895/2005 mentioned in regulation 13; and
- (b) these Regulations,

in its area.

Offences and Penalties

15.—(1) Any person who—

- (a) contravenes or fails to comply with regulation 3(1), 4(1), 5(1), 12(1) or 13(2) to (5);
- (b) intentionally obstructs any person acting in the execution of Regulation 1895/2005 or these Regulations;
- (c) without reasonable excuse fails—
 - (i) to comply with regulation 13(6); or
 - (ii) to give to any person acting in the execution of Regulation 1895/2005 or these Regulations any assistance or information which that person may reasonably require;or
- (d) in purported compliance with any requirement mentioned in sub-paragraph (c), knowingly or recklessly supplies information that is false or misleading in any material particular,

is guilty of an offence.

(2) Any person convicted of an offence under these Regulations is liable—

- (a) in the case of an offence under paragraph (1)(a)—
 - (i) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine or both;
 - (ii) on summary conviction to a term of imprisonment not exceeding six months or to a fine not exceeding the statutory maximum or both;
- (b) in the case of any other offence under these Regulations, on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level five on the standard scale or to both.

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

(4) Where an offence under these Regulations which has been committed by a body corporate or 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) any director, manager, secretary or other similar officer of the body corporate or any partner of the Scottish partnership; or
- (b) any person purporting to act in such a capacity,

that person as well as the body corporate or, as the case may be, the Scottish partnership is to be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

(5) No prosecution for an offence under these Regulations shall be begun after the expiry of 3 years from the commission of the offence or 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.

(6) 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.

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

(8) 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 shall be guilty of the offence; and a person may be convicted of the offence whether or not proceedings are taken against the first mentioned person.

General defences

16.—(1) In any proceedings for an offence under these Regulations it shall, subject to paragraph (5), 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) Without prejudice to the generality of paragraph (1), a person accused of an offence under these Regulations who did not—

- (a) prepare the plastic material or article or, as the case may be, the material or article in respect of which the offence is alleged to have been committed; nor
- (b) import it,

shall be taken to have established the defence provided by paragraph (1) if the requirements of paragraphs (3) and (4) are satisfied.

(3) The requirements of this paragraph are satisfied if it is proved that—

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reliance on information supplied by such a person;
- (b) either—
 - (i) the accused carried out all such checks of the plastic material or article or material or article in question as were reasonable in all the circumstances; or
 - (ii) it was reasonable in all the circumstances for the accused to rely on checks carried out by the person who supplied the accused with the plastic material or article or the material or article in question; and

- (c) the accused did not know and had no reason to suspect at the time the offence was committed that the accused's act or omission would amount to an offence under these Regulations.

(4) The requirements of this paragraph are satisfied if the offence is one of sale and it is proved that—

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reasonable reliance on information supplied by such a person;
- (b) the sale of which the alleged offence consisted was not a sale under the accused's name or mark; and
- (c) the accused did not know and could not reasonably have been expected to know at the time the offence was committed that the accused's act or omission would amount to an offence under these Regulations.

(5) If in any case the defence provided by this regulation involves the allegation that the commission of the offence was due to the 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 the accused 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.

Transitional defences and savings

17. Notwithstanding the revocations made by regulation 24, in relation to any plastic material or article—

- (a) manufactured before the 1st July 1998, the defence in regulation 3(3) of the 1998 Regulations;
- (b) manufactured or imported into the European Community before 1st January 2003, the defence in regulation 10(15) of the 1998 Regulations;
- (c) put into free circulation in the European Community before 30th November 2002, the defence in regulation 10(16) of the 1998 Regulations;
- (d) manufactured or imported into the European Community before 1st March 2004, the defence in regulation 10(21)(a) of the 1998 Regulations;
- (e) manufactured or imported into the European Community before 1st March 2003, the defence in regulation 10(21)(b) of the 1998 Regulations;
- (f) containing azodicarbonamide and brought into contact with food before 2nd August 2005, the defence in regulation 10(23) of the 1998 Regulations; or
- (g) manufactured or imported into the European Community before 1st March 2006, the defence in regulation 10(25) of the 1998 Regulations,

shall apply in relation to offences under these Regulations as it applied to offences under the equivalent provisions in those Regulations.

Procedure where a sample is to be analysed

18.—(1) An authorised officer who has procured a sample under section 29 of the Act and who considers it should be analysed shall divide the sample into three parts.

(2) If the sample consists of sealed containers and opening them would, in the opinion of the authorised officer, impede a proper analysis, the authorised officer shall divide the sample into parts by putting the containers into three lots, and each lot shall be treated as being a part.

- (3) The authorised officer shall—
- (a) if necessary place each part in a suitable container and seal it;
 - (b) mark each part or container;
 - (c) as soon as reasonably practicable, give one part to the owner and notify the owner in writing that the sample will be analysed;
 - (d) submit one part for analysis in accordance with section 30 of the Act; and
 - (e) retain one part for future submission under regulation 19.

Secondary analysis by the Government Chemist

- 19.—(1) Where a sample has been retained under regulation 18 and—
- (a) a decision has been made to send a report to the procurator fiscal or proceedings have been commenced against a person for an offence under these Regulations; and
 - (b) the result of the analysis carried out in accordance with regulation 18(3)(d) is to be adduced as evidence,

paragraphs (2) to (6) apply.

- (2) The authorised officer—
- (a) may of the officer's own volition prior to a report being sent to the procurator fiscal; and
 - (b) shall—
 - (i) if requested by the prosecutor;
 - (ii) if the court so orders on the application of the prosecutor or the accused; or
 - (iii) if requested by the accused (subject to paragraph (5)),send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist shall analyse the part sent under paragraph (2) and where the analysis is carried out—

- (a) under paragraph (2)(a) or (b)(i) or (iii), provide the authorised officer; or
- (b) under paragraph (2)(ii), provide the prosecutor and the accused,

with a certificate of analysis.

(4) The authorised officer shall immediately on receipt under paragraph 3(a) supply the prosecutor and the accused with a copy of the Government Chemist's certificate of analysis.

(5) Where a request is made under paragraph (2)(b)(iii) the authorised officer may give notice in writing to the accused requesting payment of a fee specified in the notice in respect of the functions mentioned in paragraph (3), and in the absence of agreement by the accused to pay the fee the authorised officer may refuse to comply with the request.

(6) Any certificate of the results of testing transmitted by the Government Chemist under this regulation may be signed by or on behalf of the Government Chemist, and the testing may be carried out by any person under the direction of the person who signs the certificate.

(7) Any certificate transmitted by the Government Chemist in accordance with paragraph (6) shall be taken as sufficient evidence of the facts stated therein unless any part to the proceedings requests that the person by whom the certificate is signed be called as a witness.

(8) In this regulation "accused" includes a person who is intended by the authorised officer to be the subject of a report to the procurator fiscal.