

2006 No. 512

FOOD

**The Curd Cheese (Restriction on Placing on the Market)
(Scotland) Regulations 2006**

<i>Made</i> - - - -	<i>19th October 2006</i>
<i>Laid before the Scottish Parliament</i>	<i>19th October 2006</i>
<i>Coming into force</i> - -	<i>20th October 2006</i>

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following Regulations:—

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Curd Cheese (Restriction on Placing on the Market) (Scotland) Regulations 2006 and come into force on 20th October 2006.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“authorised officer” means a person appointed in accordance with regulation 7;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(b);

“place on the market” and “placed on the market” shall be construed in accordance with the definition of “placing on the market” in Article 3.8 of Regulation 178/2002;

“Regulation 178/2002” means Regulation (EC) No. 178/2002 of the European Parliament and the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(c), as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council amending Regulation (EC) No. 178/2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(d) and Commission Regulation (EC) No. 575/2006 amending Regulation (EC) No. 178/2002 of the European Parliament and of the Council as regards the number and names of the permanent Scientific Panels of the European Food Safety Authority(e).

(a) 1972 c.68; section 2(2) was modified by the Scotland Act 1998 (c.46) (“the 1998 Act”), section 125 and Schedule 8, paragraph 15. The function conferred upon the Minister of the Crown by section 2(2), insofar as exercisable within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 1994 c.39.

(c) O.J. No. L 31, 1.2.02, p.1.

(d) O.J. No. L 245, 29.9.03, p.4.

(e) O.J. No. L 100, 8.4.06, p.3.

Prohibition on the placing on the market of curd cheese

3. No person shall place on the market any curd cheese manufactured by Bowland Dairy Products Limited, located at Fulshaw Head Farm, Barrowford, Lancashire BB9 6RA and approved under the number UK PE 23.

Application of various provisions of the Food Safety Act 1990

4. The following provisions of the Food Safety Act 1990(a) shall apply for the purposes of these Regulations, with the modification that any reference in those provisions to that Act or a Part of it shall be construed as a reference to these Regulations—

- (a) section 20 (offences due to fault of another person);
- (b) section 21 (defence of due diligence), with the modifications that subsections (2) to (4) shall apply in relation to an offence under regulation 6(1) as they apply in relation to an offence under section 14 or 15 and that in subsection (4)(b) the references to “sale or intended sale” shall be deemed to be references to “placing on the market”;
- (c) section 33 (obstruction etc. of officers);
- (d) section 35(1) to (3) (punishment of offences), in so far as it relates to offences under section 33 as applied by sub-paragraph (c);
- (e) section 36 (offences by bodies corporate);
- (f) section 36A (offences by Scottish partnerships); and
- (g) section 44 (protection of officers acting in good faith).

Inspection and seizure of suspected products

5.—(1) An authorised officer of a local authority may at all reasonable times inspect any product that has been placed on the market and paragraphs (2) to (7) shall apply where, on such an inspection or for any other reasonable cause, it appears to the authorised officer that any person has failed to comply with regulation 3 in relation to any product.

(2) The authorised officer may either—

- (a) give notice to the person in charge of the product that, until the notice is withdrawn, the product or any specified portion of it—
 - (i) is not to be further placed on the market, and
 - (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or
- (b) seize the product and remove it in order to have it dealt with by the sheriff.

(3) Where the authorised officer exercises the power conferred by paragraph (2)(a), that officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not that officer is satisfied that regulation 3 has been complied with in relation to the product and—

- (a) if so satisfied, shall forthwith withdraw the notice; and
- (b) if not so satisfied, shall seize the product and remove it in order to have it dealt with by the sheriff.

(4) Where an authorised officer exercises the power conferred by paragraph (2)(b) or (3)(b), that officer shall inform the person in charge of the product of the intention to have it dealt with by the sheriff and any person who under regulation 3 might be liable to prosecution in respect of the product shall, if appearing before the sheriff by whom the product falls to be dealt with, be entitled to be heard and to call witnesses.

(a) 1990 c.16.

(5) If it appears to the sheriff, on the basis of such evidence as the sheriff considers appropriate in the circumstances, that there has been a failure to comply with regulation 3 in relation to any product falling to be dealt with under this regulation, the sheriff shall condemn the product and order—

- (a) the product to be destroyed or to be so disposed of as to prevent it from being further placed on the market; and
- (b) any expenses reasonably incurred in connection with such destruction or disposal to be recoverable from the owner of the product as a debt.

(6) If a notice under paragraph (2)(a) is withdrawn, or the sheriff by whom any product falls to be dealt with under this regulation refuses to condemn it, the food authority shall compensate the owner of the product for any depreciation in its value resulting from the action taken by the authorised officer.

(7) Any disputed question as to the right to or the amount of any compensation payable under paragraph (6) shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

Offences and penalties

6.—(1) Any person who contravenes regulation 3 or knowingly contravenes the requirements of a notice given under regulation 5(2)(a) shall be guilty of an offence.

(2) Any person guilty of an offence under this regulation shall be liable—

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

(3) No prosecution for an offence consisting of a contravention of regulation 3 or of knowingly contravening the requirements of a notice given under regulation 5(2)(a) shall be begun after the expiry of—

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

whichever is the earlier.

Enforcement

7.—(1) Each local authority shall enforce these Regulations within its area.

(2) A local authority may authorise in writing any person (whether or not an officer of that authority) to act in matters arising under these Regulations.

(3) An authorised officer shall have the same powers of entry as an authorised officer of an enforcement authority under section 32 of the Food Safety Act 1990.

PAM WHITTLE

A member of the staff of the Scottish Ministers

St Andrew's House,
Edinburgh
19th October 2006

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which extend to Scotland only, implement in relation to Scotland Commission Decision 2006/694/EC prohibiting the placing on the market of curd cheese manufactured in a dairy establishment in the United Kingdom (O.J. No. L 283, 14.10.06, p.59).

2. The Regulations–

- (a) prohibit the placing on the market of any curd cheese manufactured by Bowland Dairy Products Limited, located at Fulshaw Head Farm, Barrowford, Lancashire BB9 6RA and approved under the number UK PE 23 (regulation 3);
- (b) apply with modifications certain provisions of the Food Safety Act 1990 (1990 c.16) for the purposes of these Regulations (regulation 4);
- (c) provide for the inspection and seizure of products that are suspected of having been placed on the market in contravention of regulation 3 of these Regulations (regulation 5);
- (d) create offences and penalties (regulation 6); and
- (e) make provision for their enforcement (regulation 7).

3. No Regulatory Impact Assessment has been prepared in relation to these Regulations.

£3.00

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