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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 261**

**The Food Irradiation (Scotland) Regulations 2009**

**Citation, commencement and extent**

1. These Regulations—
  - (a) may be cited as the Food Irradiation (Scotland) Regulations 2009;
  - (b) come into force on 31st July 2009; and
  - (c) extend to Scotland only.

**Application**

2. These Regulations do not apply to—
  - (a) irradiation by measuring or inspection devices at a maximum level of—
    - (i) 10 MeV in the case of X-rays;
    - (ii) 14 MeV in the case of neutrons; or
    - (iii) 5 MeV in other cases;where the dose of ionising radiation absorbed does not exceed 0.01 Gy in the case of inspection devices which utilise neutrons and 0.5 Gy in other cases; or
  - (b) irradiation of food prepared under medical supervision for patients requiring sterile diets.

**Interpretation**

- 3.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

“the Agency” means the Food Standards Agency;

“approval” includes a licence;

“approved” includes “licensed”;

“import” means to introduce from another member State or from a country outside the European Community;

“ionising radiation” means any gamma rays, X-rays or corpuscular radiations which are capable of producing ions either directly or indirectly;

“irradiated” means treated by ionising radiation, and similar expressions shall be construed accordingly;

“licence” except in regulation 7(a)(ii)(bb) means a licence granted by the Agency in accordance with Schedule 2 to a person and a facility to irradiate food and “licensed” and “licensee” shall be construed accordingly;

“official reference number” in relation to a facility in a member State means the reference number allocated by the member State in connection with its approval as an irradiation facility (being the number shown for it in the list in Schedule 3);

“sell” includes possess, offer, expose and advertise for sale, and “sale” shall be construed accordingly.

- (2) For the purposes of these Regulations—
- (a) “properly irradiated food” means food which—
- (i) was either irradiated alone or as part of a batch of food in which each item was food which fell within the same permitted category of food; and
  - (ii) has not been over-irradiated,
- and “proper irradiation” shall be construed accordingly;
- (b) food falls within a permitted category of food when (excluding the weight of any added water) no less than 98 per cent of it by weight falls within that category, and “item”, in relation to a batch of food, means each item within that batch intended to be capable of being sold individually;
- (c) the permitted categories of food are—
- (i) fruit;
  - (ii) vegetables;
  - (iii) cereals;
  - (iv) bulbs and tubers;
  - (v) dried aromatic herbs, spices and vegetable seasonings;
  - (vi) fish and shellfish; and
  - (vii) poultry;
- (d) in the permitted categories of food—
- (i) “fruit” includes fungi, tomatoes and rhubarb;
  - (ii) “vegetables” excludes fruit, cereals, bulbs and tubers and dried aromatic herbs, spices and vegetable seasonings but includes pulses;
  - (iii) “bulbs and tubers” means potatoes, yams, onions, shallots and garlic;
  - (iv) “fish and shellfish” includes eels, crustaceans and molluscs; and
  - (v) “poultry” means domestic fowls, geese, ducks, guinea fowls, pigeons, quails and turkeys;
- (e) food has been over-irradiated either when the overall average dose of ionising radiation absorbed by it, measured in accordance with Schedule 1, exceeds, in the case of—
- (i) fruit, 2 kGy;
  - (ii) vegetables, 1 kGy;
  - (iii) cereals, 1 kGy;
  - (iv) bulbs and tubers, 0.2 kGy;
  - (v) dried aromatic herbs, spices and vegetable seasonings, 10 kGy;
  - (vi) fish and shellfish, 3 kGy; or
  - (vii) poultry, 7 kGy,
- or in the circumstances described in paragraph (3).
- (3) The circumstances are that the maximum dose of ionising radiation absorbed by the food, or by any food in the same batch, measured in accordance with Schedule 1, is—
- (a) more than 3 times the minimum dose absorbed by it; or
  - (b) more than 1.5 times the overall average dose specified for the food in paragraph (2)(e).

#### **Prohibition on treatment without a licence**

- 4.—(1) No person may in the preparation of any food irradiate it or any part of it unless—
- (a) that person has been licensed;
  - (b) it is in a suitably wholesome state; and
  - (c) it is irradiated in accordance with these Regulations and any conditions of the licence.
- (2) Schedule 2 has effect in relation to licences.

#### **Restrictions on importation**

- 5.—(1) No person may import any irradiated food into Scotland for the purpose of sale unless—
- (a) it falls within a permitted category of food;
  - (b) it has been irradiated in one of the facilities listed in the table in—
    - (i) Schedule 3, being in each case a facility in a member State approved for the irradiation of foods and food ingredients by the member State concerned; or
    - (ii) Schedule 4, being in each case a facility in a country or territory outside the European Community and approved by the Community;
  - (c) it is properly irradiated food; and
  - (d) the requirements of paragraph (2) or (3) are complied with.
- (2) Where the food was irradiated in another member State, it must be accompanied by documents containing—
- (a) either the name and address of the facility which carried out the irradiation, or its official reference number; and
  - (b) the information specified in paragraph 15(1)(a) to (d) and (2)(d) of Part 3 of Schedule 2.
- (3) Where the food was irradiated outside the European Community, it must comply with the following conditions:—
- (a) it is accompanied by documents containing the name and address of the facility in which it was irradiated and the information specified in paragraph 15(1) of Part 3 of Schedule 2; and
  - (b) in the case of food other than dried aromatic herbs, spices or vegetable seasonings—
    - (i) it was irradiated by a person approved, under a reference by which the approval can be identified, by a competent authority in the country in which it was irradiated;
    - (ii) the approval requires the method of measurement specified in Schedule 1 relating to food to which the approval relates; and
    - (iii) the operation of the legislation in force in that country relating to the irradiation of food protects human health to an extent not less than human health is protected by the operation of these Regulations; and
  - (c) it complies with the conditions which apply to the food.
- (4) This regulation applies to food which has (as well as food which has not) become an ingredient of other food.
- (5) In paragraph (3)(c) the expression “the conditions which apply to the food” is to be construed in accordance with the expression “the conditions which apply to those foodstuffs” in Article 9(1) of Directive 1999/2/EC of the European Parliament and of the Council on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation<sup>(1)</sup>.

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(1) O.J. No. L 66, 13.3.1999, p.16, as amended by Regulation (EC) No. 1882/2003 (O.J. No. L 284, 31.10.2003, p.1).

**Restriction on storage or transport**

- 6.—(1) No person may store or transport for the purpose of sale any irradiated food unless—
- (a) that person is licensed in relation to the food; or
  - (b) that person has not been licensed in relation to the food and—
    - (i) where the food has been imported into Scotland, it is accompanied by the documents, or copies of the documents, required in relation to it by regulation 5(2) or (3)(a); or
    - (ii) where the irradiation took place in the United Kingdom, it is accompanied by documents containing a statement that the food has been irradiated and a document or copy containing the information specified in paragraph 15(1)(a) to (d) and (2) of Part 3 of Schedule 2.
- (2) This regulation applies to food which has (as well as food which has not) become an ingredient of other food.

**Restriction on sale**

7. No person may sell food which or any part of which has been irradiated unless—
- (a) either—
    - (i) the irradiation took place in Scotland and regulation 4 and Schedule 2 and any conditions of the licence were complied with; or
    - (ii) the irradiation took place in England, Northern Ireland or Wales; and
      - (aa) provisions having effect there, corresponding to regulation 4 and Schedule 2; and
      - (bb) any conditions of a licence to irradiate food issued there, were complied with; or
    - (iii) the food was imported into Scotland and regulation 5 was complied with; and
  - (b) where it was stored or transported, regulation 6 was complied with.

**Documentation for food not ready for final sale**

- 8.—(1) No person may import into Scotland, store or transport for the purpose of sale or sell irradiated food, or food containing an irradiated ingredient, which is not ready for delivery to the ultimate consumer or catering establishments unless the documents which accompany the food—
- (a) apply the word “irradiated” or the words “treated with ionising radiation” to the food or the ingredient, as the case may be; and
  - (b) include either the name and address of the facility which carried out the irradiation, or its official reference number.
- (2) In this regulation—
- (a) “catering establishment” means a restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed mobile stall) where, in the course of a business, food is prepared for delivery to the ultimate consumer and is ready for consumption without further preparation;
  - (b) “ultimate consumer” means any person who buys otherwise than—
    - (i) for the purpose of resale;
    - (ii) for the purposes of a catering establishment; or
    - (iii) for the purposes of a manufacturing business.

## **Enforcement**

**9.**—(1) The Agency must enforce the provisions of these Regulations in so far as they fall to be observed by a licensee.

(2) The Agency and each food authority within its area must each enforce the provisions of regulation 4 in so far as they fall to be observed by any person other than a licensee.

(3) Each food authority must enforce within its area the provisions of these Regulations except to the extent that they fall to be enforced under paragraph (1) or (2).

(4) Each authority concerned in the administration of these Regulations must give to each other authority so concerned such assistance and information as that other authority reasonably requires for the purposes of its duties under these Regulations.

## **Offences and penalties**

**10.**—(1) Any person who contravenes or fails to comply with any of the provisions of these Regulations or, for the purposes of these Regulations, makes any false statement or uses any document containing a false statement either recklessly or knowing it to be false, is guilty of an offence and is liable—

(a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 6 months or both; and

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

(2) Any licensee who contravenes or fails to comply with any condition of a licence, is guilty of an offence and is liable—

(a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding 6 months or both; and

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or both.

(3) No prosecution for an offence under these Regulations may be begun after the expiry of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.

(4) 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.

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

## **Application of various provisions of the Food Safety Act 1990**

**11.**—(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in them to the Act is construed as a reference to these Regulations—

(a) section 2 (extended meaning of “sale” etc.);

(b) section 3 (presumption that food is intended for human consumption);

(c) section 20 (offences due to fault of other person);

(d) section 21 (defence of due diligence), as it applies for the purposes of section 14 (selling food not of the nature or substance or quality demanded) or section 15 (falsely describing or presenting food);

(e) section 30(8) (which relates to documentary evidence);

- (f) section 33(1) (obstruction etc. of officers);
- (g) section 35(1) (punishment of offences), to the extent that it relates to offences under section 33(1) as applied by sub-paragraph (f) of this regulation;
- (h) section 36 (offences by bodies corporate);
- (i) section 36A (offences by Scottish partnerships)(2);
- (j) section 44 (protection of officers acting in good faith);
- (k) section 58(1) (which relates to territorial waters).

(2) Section 9 (inspection and seizure of suspected food) of the Act applies for the purposes of these Regulations as if food which it was an offence to sell under them were food which failed to comply with food safety requirements.

### **Revocations**

**12.** The following Regulations are revoked—

- (a) the Food (Control of Irradiation) Regulations 1990(3);
- (b) regulations 2 to 16 of the Food Irradiation Provisions (Scotland) Regulations 2000(4); and
- (c) the Food (Control of Irradiation) Amendment (Scotland) Regulations 2002(5).

St Andrew's House,  
Edinburgh  
23rd June 2009

*S ROBISON*  
Authorised to sign by the Scottish Ministers

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(2) Section 36A was inserted by section 40 of, and Schedule 5 to, the Food Standards Act 1999 (c.28).  
(3) S.I. 1990/2490.  
(4) S.S.I. 2000/309.  
(5) S.S.I. 2002/284.