
WELSH STATUTORY INSTRUMENTS

2005 No. 364

The Contaminants in Food (Wales) Regulations 2005

Application of various sections of the Food Safety Act 1990

7.—(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof is to be construed as a reference to these Regulations —

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21 (defence of due diligence), as it applies for the purposes of section 8, 14 or 15;
- (d) section 30(8) (which relates to documentary evidence);
- (e) section 33(1) (obstruction etc. of officers);
- (f) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above” is deemed to be a reference to any such requirement as is mentioned in section 33(1)(b) as applied by sub-paragraph (e);
- (g) section 35(1) (punishment of offences), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (e);
- (h) section 35(2) and (3), insofar as it relates to offences under section 33(2) as applied by sub-paragraph (f);
- (i) section 36 (offences by bodies corporate); and
- (j) section 44 (protection of officers acting in good faith).

(2) Subject to paragraph (3), section 9 of the Act (inspection and seizure of suspected food) applies for the purposes of these Regulations as if it read as follows —

“9.—(1) An authorised officer of a food authority or a port health authority may at all reasonable times inspect any food intended for human consumption which —

- (a) has been placed on the market; or
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of placing it on the market,

and subsections (2) to (7) below apply where, on such an inspection, it appears to the authorised officer that the placing on the market of any food contravenes regulation 3(a) of the Contaminants in Food (Wales) Regulations 2005.

(2) The authorised officer may either —

- (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it —
 - (i) is not to be used for human consumption, and
 - (ii) either is not to be removed or is to be removed to a place at which there are facilities to carry out the sampling required by Directive [98/53/EC](#), Directive [2001/22/EC](#), Directive [2002/26/EC](#), Directive [2002/69/EC](#), Directive [2003/78/EC](#) and Directive [2004/16/EC](#), as appropriate; or

(b) seize the food and remove it in order to have it dealt with by a justice of the peace.

(3) Where the authorised officer exercises the power conferred by subsection (2)(a) above, he or she, as soon as is reasonably practicable and in any event within 21 days, is to determine whether or not he or she is satisfied that the food complies with the requirements of regulation 3(a) of the above Regulations, as appropriate and —

(a) if he or she is so satisfied, forthwith withdraw the notice;

(b) if he or she is not so satisfied, seize the food and remove it in order to have it dealt with by a justice of the peace.

(4) Where an authorised officer exercises the powers conferred by subsection (2)(b) or (3)(b) above, he or she is to inform the person in charge of the food of his or her intention to have it dealt with by a justice of the peace and —

(a) any person who under regulation 3(a) of the above Regulations might be liable to a prosecution in respect of the food is, if he or she attends before the justice of the peace by whom the food falls to be dealt with, entitled to be heard and to call witnesses; and

(b) that justice of the peace may, but need not, be a member of the court before which any person is proceeded against for an offence consisting of a contravention of regulation 3(a) of the above Regulations in relation to that food.

(5) If it appears to a justice of the peace, on the basis of such evidence as he or she considers appropriate in the circumstances, that any food falling to be dealt with by him or her under this section fails to comply with the requirements of regulation 3(a) of the above Regulations he or she is to condemn the food and order —

(a) the food to be destroyed or to be so disposed of as to prevent it from being used for human consumption; and

(b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the food.

(6) If a notice under subsection (2)(a) above is withdrawn, or the justice of the peace by whom any food falls to be dealt with under this section refuses to condemn it, the food authority or, as the case may be, port health authority, is to compensate the owner of the food 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 subsection (6) above is to be determined by arbitration.

(8) Any person who knowingly contravenes the requirements of a notice under paragraph (a) of subsection (2) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

(3) The expressions “authorised officer”, “food authority”, “port health authority”, “human consumption”, “placing on the market”, “Directive 98/53/EC”, “Directive 2001/22/EC”, “Directive 2002/26/EC”, “Directive 2002/69/EC”, “Directive 2003/78/EC” and “Directive 2004/16/EC” which are used in section 9 of the Act so far as it applies for the purposes of these Regulations by virtue of paragraph (2), are, for those purposes, to bear the meanings that those English expressions and their corresponding Welsh expressions respectively bear in these Regulations.