

Order made by the Scottish Ministers, laid before the Scottish Parliament under section 1(8) of the Food and Environment Protection Act 1985 for approval by resolution of the Scottish Parliament within twenty-eight days beginning with the day on which the Order was made, subject to extension for periods of dissolution or recess for more than four days.

SCOTTISH STATUTORY INSTRUMENTS

2004 No. 340

PUBLIC HEALTH

CONTAMINATION OF FOOD

The Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Irish Sea) (Scotland) Order 2004

Made - - - - 28th July 2004

Coming into force in accordance with article 1(1)

Laid before the Scottish Parliament 30th July 2004

The Scottish Ministers, in exercise of the powers conferred by section 1(1) and (2) and section 24(3) of the Food and Environment Protection Act 1985^(a) and of all other powers enabling them in that behalf, being of the opinion that there exist or may exist circumstances which are likely to create a hazard to human health through human consumption of food and that in consequence food which is derived or may be in the future derived from bivalve molluscs in the area described in the following Order, is, or may be, or may become, unsuitable for human consumption, hereby make the following Order:

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Irish Sea) (Scotland) Order 2004 and shall come into force at 1630 hours on 28th July 2004.

(2) In this Order—

- (a) “scallops” means scallops of the class of *Pecten maximus*; and
- (b) “relevant time” means 0001 hours on 28th July 2004.

Designated circumstances

2. In the opinion of the Scottish Ministers, scallops in the area designated in article 3 below may be affected by the toxin which causes amnesic shellfish poisoning in human beings and are likely to create a hazard to human health if they are consumed.

^(a) 1985 c.48; section 1(1) and (2) were amended by section 51(2)(a) and (b) of the Food Safety Act 1990 (c.16); section 1(2) defines “designating authority”; section 1 was further amended by the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756), Schedule, paragraph 10(2) and (3), the Food Standards Act 1999 (c.28), Schedule 5, paragraph 6 and the Scotland Act 1998 (Consequential Modifications) Order 2000 (S.I. 2000/2040), Schedule, Part I, paragraph 12.

Designated area

3. The area described in the Schedule to this Order is hereby designated for the purposes of Part I of the Food and Environment Protection Act 1985.

Activity prohibited in the designated area

4. No person shall fish for or take any scallops in the designated area.

Prohibited movement of scallops

5. No person shall move any scallops out of the designated area.

Restrictions

6. No person shall—

- (a) use any scallops taken out of the designated area after the relevant time in the preparation or processing for supply of food and anything from which food could be derived;
- (b) land any scallops which were in waters in the designated area after the relevant time;
- (c) supply, or have in possession for supply, any scallops which were in the designated area after the relevant time;
- (d) supply, or have in possession for supply, any food or anything from which food could be derived in the preparation or processing of which anything was used in contravention of paragraph (a) of this article; or
- (e) feed to any creature a feeding stuff in the preparation or processing of which anything was used in contravention of paragraph (a) of this article.

St Andrew's House,
Edinburgh
28th July 2004

MALCOLM CHISHOLM
A member of the Scottish Executive

SCHEDULE

Article 3

Designated Area

The area of sea below mean high water springs enclosed by a line starting at a point on the west shore of Wigtown Bay at 54°45' North latitude 4°21'38" West longitude; then east to a point at 54°45' North latitude 4° West longitude; then south to the point where the boundary of the Scottish Zone crosses 4° West longitude; then in a generally south westerly direction along the boundary of the Scottish Zone to the point where it crosses 4°30' West longitude; then north to a point on the east coast of Luce Bay at 54°42'19" North latitude 4°30' West longitude; then east and south along the shoreline of Wigtown Bay; then north and east continuing along the shoreline of Burrow Head, Cairn Head and Portyerrock Bay to the point of beginning.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order, which forms part of Scots law only, contains emergency prohibitions restricting various activities in order to prevent human consumption of food rendered unsuitable for that purpose by virtue of shellfish having been affected by the toxin which causes amnesic shellfish poisoning in human beings.

The Order designates an area of sea off Dumfries and Galloway within which taking scallops is prohibited (articles 3 and 4 and the Schedule). It prohibits the movement of scallops out of that area (article 5). Other restrictions are imposed in relation to the use of any scallops taken from that area (article 6). The designated area extends to the limit of the Scottish Zone. For the purposes of the Food and Environment Protection Act 1985 (“the 1985 Act”), the “Scottish Zone” is as defined in section 126(1) of the Scotland Act 1998 (c.46) (“the 1998 Act”). Detailed co-ordinates for the purposes of this definition are contained in The Scottish Adjacent Waters Boundaries Order 1999 (S.I.1999/1126), made under section 126(2) of the 1998 Act.

It is an offence by virtue of section 1(6) of the 1985 Act as read with Schedule 1, paragraph 4 to the 1998 Act as inserted by paragraph 10(13) of the Schedule to the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756), to contravene any of the prohibitions contained in this Order anywhere in the United Kingdom or in United Kingdom waters.

Under section 21 of the Act the penalty for contravening an emergency prohibition is—

- (a) on summary conviction, a fine of an amount not exceeding the statutory maximum (at present £5,000);
- (b) on conviction on indictment, an unlimited fine, or imprisonment for a term of not more than two years, or both.

Powers of enforcement in relation to emergency prohibitions are conferred by section 4 of, and Schedule 2 to, the 1998 Act. Obstruction of enforcement officers is an offence under paragraph 10 of that Schedule.

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