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SCOTTISH STATUTORY INSTRUMENTS

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**2006 No. 3**

**The Food Hygiene (Scotland) Regulations 2006**

**PART 3**

**ADMINISTRATION AND ENFORCEMENT**

**Procurement of samples**

**12.** An authorised officer of an enforcement authority may for the purpose of the performance by the authority of its functions under the Hygiene Regulations—

- (a) purchase a sample of any food, or any substance capable of being used in the preparation of food;
- (b) take a sample of any food, or any such substance, which—
  - (i) appears to the officer to be intended for placing on the market or to have been placed on the market, for human consumption; or
  - (ii) is found by the officer on or in any premises which the officer is authorised to enter by or under regulation 14;
- (c) take a sample from any food source, or a sample of any contact material, which is found on or in any such premises; and
- (d) take a sample of any article or substance which is found on or in any such premises and which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of these Regulations.

**Analysis etc. of samples**

**13.—(1)** An authorised officer of an enforcement authority who has procured a sample under regulation 12 shall—

- (a) if that officer considers that the sample should be analysed, submit it to be analysed—
  - (i) by the public analyst for the area in which the sample was procured, or
  - (ii) by the public analyst for the area which consists of or includes the area of the authority;
- (b) if that officer considers that the sample should be examined, submit it to be examined by a food examiner.

(2) A person, other than such an officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it—

- (a) to be analysed by the public analyst for the area in which the purchase was made; or
- (b) to be examined by a food examiner.

(3) If, in any case where a sample is proposed to be submitted for analysis under this regulation, the office of public analyst for the area in question is vacant, the sample shall be submitted to the public analyst for some other area.

(4) If, in any case where a sample is proposed to be or is submitted for analysis or examination under this regulation, the food analyst or examiner is for any reason unable to perform the analysis or examination, the sample shall be submitted or, as the case may be, sent by the food analyst or examiner to such other food analyst or examiner as that person may determine.

(5) A food analyst or examiner shall analyse or examine as soon as practicable any sample submitted or sent to that person under this regulation, but may, except where—

(a) that person is the public analyst for the area in question; and

(b) the sample is submitted for analysis by an authorised officer of an enforcement authority, demand in advance the payment of such reasonable fee as the food analyst or examiner may require.

(6) Any food analyst or examiner who has analysed or examined a sample shall give to the person by whom it was submitted a certificate specifying the result of the analysis or examination.

(7) Any certificate given by a food analyst or examiner under paragraph (6) shall be signed by the food analyst or examiner, but the analysis or examination may be made by any person acting under the direction of the food analyst or examiner.

(8) In any proceedings under these Regulations, the production by one of the parties—

(a) of a document purporting to be a certificate given by a food analyst or examiner under paragraph (6); or

(b) of a document supplied to that party by the other party as being a copy of such a certificate, shall be sufficient evidence of the facts stated in it unless, in a case falling within sub paragraph (a), the other party requires that the food analyst or examiner shall be called as a witness.

(9) In this regulation, where two or more public analysts are appointed for any area, any reference to the public analyst for that area shall be construed as a reference to either or any of them.

(10) The Food Safety (Sampling and Qualifications) Regulations 1990<sup>(1)</sup> shall apply in relation to a sample procured by an authorised officer of a food authority under regulation 12 as if it was a sample procured by an authorised officer under section 29 of the Act.

(11) The certificate given by a food analyst or examiner under paragraph (6) shall be in the form set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations 1990.

### **Powers of entry**

**14.—**(1) An authorised officer of an enforcement authority other than the Agency shall, on producing, if so required, some duly authenticated document showing the officer's authority, have a right at all reasonable hours—

(a) to enter any premises within the authority's area for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of the Hygiene Regulations;

(b) to enter any premises, whether within or outside the authority's area, for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that area; and

(c) to enter any premises for the purpose of the performance by the authority of its functions under the Hygiene Regulations,

but subject to paragraph (3) admission to any premises used only as a private dwelling-house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(1) S.I.1990/2463, to which there are amendments not relevant to these Regulations.

(2) An authorised officer of the Agency shall, on producing if so required some duly authenticated document showing the officer's authority, have a right at all reasonable hours to enter any premises for the purpose of—

- (a) ascertaining whether there is or has been on the premises any contravention of the provisions of the Hygiene Regulations;
- (b) ascertaining whether there is on the premises any evidence of any such contravention; and
- (c) the performance by the Agency of its functions under the Hygiene Regulations,

but subject to paragraph (3) admission to any premises used only as a private dwelling—house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(3) If the sheriff, a magistrate or a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any such purpose as is mentioned in paragraph (1) or (2) and either—

- (a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or
- (b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the sheriff, magistrate or justice may by signed warrant authorise the authorised officer to enter the premises, if need be by reasonable force.

(4) Every warrant granted under this regulation shall continue in force for a period of 1 month.

(5) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may be accompanied by such other persons as the officer considers necessary, and on leaving any unoccupied premises entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as they were found.

(6) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are stored in any electronic form—

- (a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and
- (b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance as the officer may reasonably require.

(7) Any officer exercising any power conferred by paragraph (6) may—

- (a) seize and detain any records which the officer has reason to believe may be required as evidence in proceedings under any of the provisions of these Regulations; and
- (b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

(8) If any person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any person any information obtained on the premises with regard to any trade secret, that person is, unless the disclosure is made in the performance of that person's duty, guilty of an offence.

(9) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981(2), to enter any premises—

- (a) on which an animal or bird affected with any disease to which that Act applies is kept; and
- (b) which is situated in a place declared under that Act to be infected with such a disease.

**Obstruction etc. of officers**

15.—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of the Hygiene Regulations; or
- (b) without reasonable cause, fails to give to any person acting in the execution of the Hygiene Regulations any assistance or information which that person may reasonably require for the performance of functions under the Hygiene Regulations,

is guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (1)(b)—

- (a) furnishes information which that person knows to be false or misleading in a material particular; or
- (b) recklessly furnishes information which is false or misleading in a material particular,

is guilty of an offence.

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

**Time limit for commencement of prosecutions**

16.—(1) No prosecution for an offence under these Regulations which is punishable under regulation 17(2) shall be begun after the expiry of—

- (a) 3 years from the commission of the offence; or
- (b) 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.

(2) 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.

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

**Offences and penalties**

17.—(1) Subject to paragraph (4), any person who contravenes or fails to comply with any of the specified Community provisions is guilty of an offence.

(2) Subject to paragraph (3), a person guilty of an offence under these Regulations is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 2 years, to a fine or to both.

(3) A person guilty of an offence under regulation 15 is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

(4) A person is not to be considered to have contravened or failed to comply with Article 4(2) of Regulation 852/2004 as read with paragraph 4 of Chapter IV of Annex II to that Regulation (bulk

foodstuffs in liquid, granulate or powder form to be transported in receptacles and/or containers/tankers reserved for the transport of foodstuffs) if the requirements of Schedule 3 have been complied with.

### **Offences by bodies corporate**

**18.**—(1) Where an offence under these Regulations which has been committed by a body corporate 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
- (b) any person who was purporting to act in any such capacity,

that person as well as the body corporate is to be deemed to be guilty of that offence and is liable to be proceeded against and punished accordingly.

(2) In paragraph (1)(a) “director”, in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

### **Offences by Scottish partnerships**

**19.** Where an offence under these Regulations which has been committed by 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 partner, that partner as well as the partnership is to be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

### **Right of appeal**

**20.**—(1) Any person who is aggrieved by—

- (a) a decision of an authorised officer of an enforcement authority to serve a hygiene improvement notice;
- (b) a decision of an enforcement authority to refuse to issue a certificate under regulation 7(6) or 8(8); or
- (c) a decision of an authorised officer of an enforcement authority to serve a remedial action notice,

may appeal to the sheriff.

(2) An appeal to the sheriff under paragraph (1) shall be by way of summary application.

(3) The period within which an appeal under paragraph (1) may be brought shall be—

- (a) 1 month from the date on which notice of the decision was served on the person desiring to appeal; or
- (b) in the case of an appeal against a decision to issue a hygiene improvement notice, the period specified in sub-paragraph (a) or, if it is shorter, the period specified in the notice pursuant to regulation 6(1)(d).

(4) Where an appeal under paragraph (1)(b) is granted, the authority concerned shall give effect to the determination of the sheriff.

### **Appeal to Court of Session**

**21.** A person who is aggrieved by—

- (a) the dismissal of an appeal under regulation 20(1), or

(b) a decision to make a hygiene prohibition order or a hygiene emergency prohibition order, may appeal to the Court of Session.

### **Appeals against hygiene improvement notices and remedial action notices**

**22.**—(1) On an appeal against a hygiene improvement notice or a remedial action notice, the sheriff or the Court may cancel or affirm the notice and, if the notice is affirmed, may do so either in its original form or with such modifications as the sheriff or the Court may in the circumstances think fit.

(2) Where any period specified in a hygiene improvement notice pursuant to regulation 6(1)(d) would otherwise include any day on which an appeal against that notice is pending, that day shall be excluded from that period.

(3) Any appeal shall be regarded as pending for the purposes of paragraph (2) until it is finally disposed of or is withdrawn.

### **Application of section 9 of the Food Safety Act 1990**

**23.** Section 9 of the Act (inspection and seizure of suspected food)(**3**) shall apply for the purposes of these Regulations with the modification that it shall apply in relation to an authorised officer of an enforcement authority as it applies in relation to an authorised officer of a food authority.

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(3) Section 9 was amended by the General Food Regulations 2004 (S.I. [2004/3279](#)) and section 1(1) and (2) (definition of “food”) was substituted by the Food Safety Act 1990 (Amendment) Regulations 2004 (S.I. [2004/2990](#)).