
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 106

FOOD

**The Quick-frozen Foodstuffs
Amendment (Scotland) Regulations 2007**

Made - - - - 21st February 2007
*Laid before the Scottish
Parliament* - - - - 22nd February 2007
Coming into force - - 16th March 2007

The Scottish Ministers, in exercise of the powers conferred by sections 16(1), 17(1), 26 and 48(1) of the Food Safety Act 1990(1) and of all other powers enabling them in that behalf, having had regard, in accordance with section 48(4A) of that Act, to relevant advice given to them by the Food Standards Agency and after consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of 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(2), hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Quick-frozen Foodstuffs Amendment (Scotland) Regulations 2007 and shall come into force on 16th March 2007.

(2) These Regulations extend to Scotland only.

Amendment of the Quick-frozen Foodstuffs Regulations 1990

2. The Quick-frozen Foodstuffs Regulations 1990(3) are amended as follows—

(a) in regulation 2 (interpretation and scope)—

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- (1) 1990 c. 16; section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; sections 16(1) and 48(1) were amended by the Food Standards Act 1999 (c. 28) (“the 1999 Act”), section 40(1) and Schedule 5, paragraph 8; section 17(2) was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, section 40(4) and Schedule 6; section 48(4) is disapplied in respect of these Regulations by virtue of section 48(4C), inserted by S.I. 2004/2990; amendments made by Schedule 5 to the 1999 Act are to be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c. 46) (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State, so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Insofar as not so transferred, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).
- (2) O.J. No. L 31, 1.2.02, p.1 as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.03, p.4) and by Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 8.4.2006 p.3).
- (3) S.I. 1990/2615, amended by S.I. 1992/2596, S.I. 1994/298, S.I. 1996/1499, S.I. 2004/395.

(i) after the definition of “monitoring” insert–

““placing on the market” has the meaning that it bears in Regulation 178/2002 and “placed on the market” and “place on the market” shall be construed accordingly;”;

(ii) after the definition of “quick-frozen foodstuff” insert–

““Regulation 178/2002” means Regulation (EC) No. 178/2002 of the European Parliament and of 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(4) 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(5) 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(6); “Regulation 37/2005” means Commission Regulation (EC) No. 37/2005 on the monitoring of temperatures in the means of transport, warehousing and storage of quick-frozen foodstuffs intended for human consumption(7);

“specified Community provision” means any provision of Regulation 37/2005 that is specified in column 1 of Schedule 2 and whose subject matter is described in column 2 of that Schedule;”;

- (b) (i) in regulation 3, for “sell” substitute “place on the market”;
- (ii) in regulation 4, for “sell” substitute “place on the market” and for “to the ultimate consumer” substitute “intended for the ultimate consumer”;
- (iii) in regulation 5(4) for “sell” where it first appears substitute “place on the market”, for “to the ultimate consumer” substitute “intended for the ultimate consumer” and for “no person shall sell it to any other person” substitute “no person shall place on the market any food intended for any other person”;
- (iv) in regulation 4(b), 5(1) and 6 for “sale” substitute “placing on the market”;
- (v) in regulation 6 for “a sale of” substitute “to be placed on the market”;
- (vi) in regulation 8 paragraph (a) is omitted.

(c) in regulation 5(5) for the definition of “Council Directive 89/108/EEC” substitute–

““Council Directive 89/108/EEC” means Council Directive 89/108/EEC on the approximation of the laws of Member States relating to quick frozen foodstuffs for human consumption(8) as amended by Regulation 1882/2003 of the European Parliament and of the Council of 29 September 2003(9), the Act of accession of Norway, Austria, Sweden and Finland(10), the Act of accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and the Slovak Republic(11), Regulation 1882/2003 adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission

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

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

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

(7) O.J. No. L 10, 13.1.05, p.18.

(8) O.J. No. L 40, 11.2.89, p.34.

(9) O.J. No. L 284, 31.10.03, p.1.

(10) O.J. No. C 241, 29.8.94, p.212.

(11) O.J. No. L 236, 23.9.03, p.92.

in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty⁽¹²⁾, Council Directive 2006/107/EC adapting Directive 89/108/EEC relating to quick-frozen foodstuffs for human consumption and Directive 2000/13/EC of the European Parliament and of the Council relating to the labelling, presentation and advertising of foodstuffs, by reason of the accession of Bulgaria and Romania⁽¹³⁾

- (d) regulation 6A is omitted;
- (e) in regulation 7 (penalties and enforcement) after paragraph (1) insert–
 - “(1A) Subject to paragraphs (1B) and (1C), if any person contravenes or fails to comply with a specified Community provision, that person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
 - (1B) A person shall not be considered to have contravened or failed to comply with the first sentence of the first paragraph of Article 2.2 of Regulation 37/2005 if the requirements of Schedule 3 are complied with.
 - (1C) A person shall not be considered to have contravened or failed to comply with Article 2 of Regulation 37/2005 if–
 - (a) the offence which would otherwise have been committed was in respect of a cold store facility with a capacity of less than 10m³ used for storing stock in retail outlets; and
 - (b) the air temperature in the cold store is measured by an easily visible thermometer.”.
- (f) for Schedule 2 substitute the Schedule set out in Schedule 1 to these Regulations;
- (g) after Schedule 2 as substituted by paragraph (f) above, insert the Schedule set out in Schedule 2 to these Regulations.

St Andrew’s House,
Edinburgh
21st February 2007

LEWIS MACDONALD
Authorised to sign by the Scottish Ministers

⁽¹²⁾ O.J. No. L 284, 31.10.03, p.1.
⁽¹³⁾ O.J. No. L 109, 6.5.00, p.29.

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SCHEDULE 1

Regulation 2(f)

“SCHEDULE 2

Regulation 2(a)(ii)

SPECIFIED COMMUNITY PROVISIONS

<i>1. Provision of Regulation 37/2005</i>	<i>2. Subject-matter</i>
Article 2.1	Requirement that the means of transport, warehousing and storage of quick frozen foodstuffs shall be fitted with suitable recording instruments to monitor, at frequent and regular intervals, the air temperature to which the quick frozen foodstuffs are subjected.
Article 2.2 – first sentence of first paragraph	Requirement that all measuring instruments described in Article 2.1 of Regulation 37/2005 shall comply with EN 12830, EN 13485 and EN 13486 standards.
Article 2.2 – second sentence of first paragraph	Requirement that food operators keep all relevant documents verifying that those measuring instruments conform to the relevant EN standard.
Article 2.3	Requirement that temperature recording shall be dated and stored by the food operator for a period of at least a year, or for longer taking into account the nature and shelf life of the quick frozen foodstuffs.
Article 3.1 – first paragraph	Requirement that during storage in retail display cabinets, or in the course of local distribution, the air temperature shall only be measured by at least one easily visible thermometer.
Article 3.1 – second paragraph (a) and (b)	Requirement that in open retail cabinets the maximum load line of the cabinet shall be clearly marked and the thermometer shall indicate the temperature at the air return side at the level of that mark.”

SCHEDULE 2

Regulation 2(g)

“SCHEDULE 3

Regulation 2(e)

TRANSITIONAL REQUIREMENTS FOR MEASURING
INSTRUMENTS INSTALLED BEFORE 1st JANUARY 2006

Application

1. This Schedule applies only in respect of measuring instruments used for the purpose of monitoring temperature as provided for in Article 2.1 of Regulation 37/2005, which were installed before 1st January 2006.
2. This Schedule will cease to have effect on 1st January 2010.

Requirements

3. The requirements are that—
 - (a) in respect of any means of storage or transport, other than those mentioned in the following sub paragraphs, the instrument shall be a system suitable for the monitoring, at frequent and regular intervals, of air temperatures within such means of storage or transport;
 - (b) in respect of storage in a cold chamber with a capacity of less than 10m³ on premises used for placing quick-frozen foodstuffs on the market for retail purposes, the instrument shall be a thermometer so placed as to be easily visible;
 - (c) in respect of storage in a retail display cabinet (other than an open retail display cabinet), the instrument shall be one or more thermometers so placed as to be easily visible;
 - (d) in respect of storage in an open retail display cabinet, the instrument shall be one or more thermometers so placed as to be easily visible and indicating the temperature at the air return side at the level of the clearly marked maximum load line for that cabinet;
 - (e) in respect of any means of transport other than—
 - (i) a vehicle registered outside the United Kingdom; or
 - (ii) a means of transport when being used in the course of local distribution,the instrument shall be a system for monitoring air temperatures that—
 - (aa) has an accuracy of plus or minus 1°C when its sensor is measuring a temperature within the range of –25°C to +30°C;
 - (bb) has a measuring accuracy which does not change by more than plus or minus 0.5°C when it is operating in temperatures within the range of –20°C to +30°C;
 - (cc) has a display resolution of not more than 1°C; and
 - (dd) is robust and shockproof;
 - (f) in respect of a vehicle registered outside the United Kingdom, the instrument shall be an instrument which has been approved by the competent authority in the country in which the vehicle is registered; and
 - (g) in respect of means of transport when being used in the course of local distribution, the instrument shall be one or more thermometers so placed as to be easily visible.”.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, amend the Quick-frozen Foodstuffs Regulations 1990 (S.I.1990/2615, as amended).

They provide for the execution and enforcement of Commission Regulation (EC) No. 37/2005 (“Regulation 37/2005”) on the monitoring and storage of quick-frozen foodstuffs intended for human consumption (O.J. No. L 10, 13.1.05, p.18.)

These Regulations—

- (a) prohibit failure to comply with specified provisions of Regulation 37/2005 and provide penalties for a failure to comply with that prohibition (regulation 2(e) and (f) and Schedule 1));
- (b) provide an exception to that prohibition for a transitional period up to the 1st January 2010 (regulation 2(e), (g) and Schedule 2);
- (c) revoke provisions of the Quick-frozen Foodstuffs Regulations 1990 which implemented Directive 92/1/EEC (O.J. No. L 34, 11.2.92, p.28) which was revoked by Regulation 37/2005 (regulation 2(b)(vi) and (d));
- (d) update and supplement the interpretation provisions of the instrument (regulations 2(a) and (b)).

A full regulatory impact assessment of the effect that this instrument will have on the costs of business (and the voluntary sector) has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency (Scotland), 6th Floor, St Magnus House, 25 Guild Street, Aberdeen, AB11 6NJ.