
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 29

The Contaminants in Food (Scotland) Regulations 2007

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Contaminants in Food (Scotland) Regulations 2007 and come into force on 1st March 2007.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

“authorised lettuce” means lettuce of the kind specified in point 1.3 of Section 1 of the Annex to the Commission Regulation, which complies with the conditions of the derogation under Article 7(2) in relation to the United Kingdom;

“authorised officer” means any person who is authorised in writing, either generally or specifically, by a food authority to act in matters arising under these Regulations;

“authorised spinach” means spinach of the kind specified in point 1.1 of Section 1 of the Annex to the Commission Regulation, which complies with the conditions of the derogation under Article 7(1) in relation to the United Kingdom; and

“the Commission Regulation” means Commission Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs⁽¹⁾;

(2) Other expressions used in these Regulations and in the Commission Regulation have the same meaning as in the Commission Regulation.

(3) Any reference to a numbered Article is a reference to the Article so numbered in the Commission Regulation.

Offences and penalties

3.—(1) Subject to paragraph (3) and to the transitional arrangements contained in Article 11, it is an offence to contravene or fail to comply with any of the Community provisions specified in paragraph (2).

(2) The provisions mentioned in paragraph (1) are—

(a) Article 1(1) (prohibition on the placing on the market of foodstuffs containing contaminants in excess of prescribed limits), as read with Articles 1.2, 2, 4 and 5; and

(b) Article 3 (prohibitions on use, mixing and detoxification).

(3) Paragraph (1) does not apply to the placing on the market of authorised lettuce or authorised spinach.

(4) Any person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

⁽¹⁾ O.J. No. L 364, 20.12.06, p.5.

Enforcement and competent authorities

4.—(1) It shall be the duty of each food authority within its area to execute and enforce these Regulations and the Commission Regulation.

(2) The competent authority for the purposes of Article 2(2) (justification by food business operators of concentration or dilution factors) is the authority having the duty to enforce under paragraph (1).

Application of various sections of the Food Safety Act 1990

5.—(1) The following provisions of the Act shall apply for the purposes of these Regulations, with the modification that any reference in those provisions to the Act or Part thereof shall 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 14 or 15;
- (d) section 30(8) (which relates to documentary evidence);
- (e) section 33 (obstruction etc. of officers);
- (f) section 35(1) to (3) (punishment of offences), insofar as it relates to offences under section 33(1) and (2), as applied by sub-paragraph (e);
- (g) section 36 (offences by bodies corporate);
- (h) section 36A (offences by Scottish partnerships); and
- (i) 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) shall apply for the purposes of these Regulations as if it read as follows—

“9.—(1) An authorised officer of a food authority may at all reasonable times inspect any food intended for human consumption which has been placed on the market and subsections (2) to (7) below shall apply where, on such an inspection, it appears to the authorised officer that the placing on the market of any food fails to comply with the requirements specified in regulation 3(2)(a) of the Contaminants in Food (Scotland) Regulations 2007 (“the Regulations”), as read with regulation 3(3) of the Regulations and with Article 11 of the Commission Regulation (“the Community requirements”).

(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 sampling in the manner required by Article 8 of the Commission Regulation; or
- (b) seize the food and remove it in order to have it dealt with by the sheriff.

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

- (a) if that officer is so satisfied, shall forthwith withdraw the notice;

(b) if that officer is not so satisfied, shall seize the food and remove it in order to have it dealt with by the sheriff.

(4) Where an authorised officer exercises the powers conferred by subsection (2)(b) or (3)(b), that officer shall inform the person in charge of the food of the intention to have it dealt with by the sheriff and any person who under regulation 3(2)(a) of the Regulations might be liable to a prosecution in respect of the food shall, if attending before the sheriff by whom the food falls to be dealt with, be entitled to be heard and to call witnesses.

(5) If it appears to the sheriff, on the basis of such evidence as the sheriff considers appropriate in the circumstances, that any food falling to be dealt with under this section fails to comply with the Community requirements, the sheriff shall 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 sheriff by whom any food falls to be dealt with under this section refuses to condemn it, the food authority shall 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) shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(8) Any person who knowingly contravenes the requirements of a notice under subsection (2)(a) shall be 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”, “placing on the market” and “the Commission Regulation” 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), shall, for those purposes, bear the meanings that those expressions respectively bear in these Regulations.

Consequential amendment

6. In Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 1990(2) (provisions to which those Regulations do not apply), for the entry relating to the Contaminants in Food (Scotland) Regulations 2006(3), substitute—

“The Contaminants in Food (Scotland) Regulations 2007 (to the extent that a sample falls to be prepared and analysed in accordance with the Commission Regulation as that expression is defined in those Regulations)	S.S.I. 2007/29. ”
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Revocation

7. The Contaminants in Food (Scotland) Regulations 2006 are revoked.

(2) S.I.1990/2463, relevantly amended by S.I. 1999/1603, S.S.I. 2002/267 and 2003/289.

(3) S.S.I. 2006/306.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

St Andrew's House,
Edinburgh
1st February 2007

LEWIS MACDONALD
Authorised to sign by the Scottish Ministers