

**2007 No. 363**

**FOOD**

**The Food (Suspension of the Use of E 128 Red 2G as Food Colour) (Scotland) Regulations 2007**

<i>Made</i> - - - -	<i>1st August 2007</i>
<i>Laid before the Scottish Parliament</i>	<i>2nd August 2007</i>
<i>Coming into force</i> - -	<i>3rd August 2007</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them to do so.

**Citation, commencement and extent**

1. These Regulations may be cited as the Food (Suspension of the Use of E 128 Red 2G as Food Colour) (Scotland) Regulations 2007, come into force on 3rd August 2007 and extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“authorised officer” means a person authorised in accordance with regulation 3(2);

“the Commission Regulation” means Commission Regulation (EC) No. 884/2007 on emergency measures suspending the use of E 128 Red 2G as food colour(b); and

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(c).

(2) Expressions used in these Regulations and the Commission Regulation have the same meaning in these Regulations as they do in the Commission Regulation.

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

**Enforcement**

3.—(1) Each local authority shall execute and enforce the Commission Regulation and these Regulations within its area.

(2) A local authority may authorise in writing any person (whether or not an officer of that authority) to act in matters arising under these Regulations.

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(a) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51).

(b) O.J. No. L 195, 27.7.07, p.8.

(c) 1994 c.39.

(3) An authorised officer shall have the same powers as an authorised officer of an enforcement authority under section 32 (powers of entry) of the Food Safety Act 1990(a).

#### **Suspension of activities involving the colour E 128 Red 2G**

4.—(1) Notwithstanding the provisions of the Colours in Food Regulations 1995(b), any person who contravenes or fails to comply with the following provisions of the Commission Regulation shall be guilty of an offence—

- (a) Article 1(1) (suspending the use of the colour E 128 Red 2G in food);
- (b) Article 1(2) (suspending the placing on the market of food containing the colour E 128 Red 2G); or
- (c) Article 1(3) (suspending the import of food containing the colour E 128 Red 2G).

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding three months, or to both.

#### **Application of various provisions of the Food Safety Act 1990**

5. The following provisions of the Food Safety Act 1990 shall apply for the purposes of these Regulations with the modification that any reference in those provisions to that Act or Part thereof shall be construed as a reference to these Regulations—

- (a) section 20 (offences due to fault of another person);
- (b) section 21 (defence of due diligence)(c), with the modifications that subsections (2) to (4) shall apply in relation to an offence under regulation 4(1)(b) as they apply in relation to an offence under section 14 or 15 and that in subsection (4)(b) the references to “sale or intended sale” shall be deemed to be references to “placing on the market”;
- (c) section 33 (obstruction etc. of officers);
- (d) section 35(1) to (3) (punishment of offences), in so far as it relates to offences under section 33 as applied by sub-paragraph (c);
- (e) section 36 (offences by bodies corporate);
- (f) section 36A (offences by Scottish partnerships)(d); and
- (g) section 44 (protection of officers acting in good faith).

*SHONA ROBISON*

Authorised to sign by the Scottish Ministers

St Andrew's House,  
Edinburgh  
1st August 2007

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(a) 1990 c.16.

(b) S.I. 1995/3124, to which there are amendments not relevant to these Regulations.

(c) Section 21 was amended by S.I. 2004/3279.

(d) Section 36A was inserted by the Food Standards Act 1999 (c.28), Schedule 5, paragraph 16.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the execution and enforcement in relation to Scotland of Commission Regulation (EC) No. 884/2007 on emergency measures suspending the use of E 128 Red 2G as food colour (O.J. No. L 195, 27.7.2007, p.8) (“the Commission Regulation”).

By virtue of European Parliament and Council Directive 94/36/EC (O.J. No. L 237, 10.9.1994, p.13, as amended by Regulation (EC) No. 1882/2003 of the European Parliament and of the Council, O.J. No. L 284, 31.10.2003, p.1), the colour E 128 Red 2G is legally authorised for use in all Member States. That Directive was implemented by the Colours in Food Regulations 1995. However, the Commission Regulation suspends with immediate effect the use of the colour E 128 Red 2G in food and the placing on the market and the import of food containing the colour E 128 Red 2G. The Commission Regulation is subject to derogations in relation to certain breakfast sausages and burger meat.

These Regulations—

- (a) provide for execution and enforcement (*regulation 3*);
- (b) provide that a person who contravenes or fails to comply with certain provisions of the Commission Regulation (relating to suspending the use of the colour E 128 Red 2G in food; suspending the placing on the market of food containing the colour E 128 Red 2G; and suspending the import of food containing the colour E 128 Red 2G) is guilty of an offence (*regulation 4(1)*);
- (c) provide penalties for offences under regulation 4(1) (*regulation 4(2)*); and
- (d) apply with modifications certain provisions of the Food Safety Act 1990 for the purposes of these Regulations (*regulation 5*).

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.

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