
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 471

**The Materials and Articles in Contact
with Food (Scotland) Regulations 2007**

PART 5

General

Offences and penalties

13.—(1) Any person who—

- (a) contravenes the provisions of regulation 8(2), 10(3), (4), (6) or (7), or 11(1) or (3);
- (b) intentionally obstructs any person acting in the execution of Regulation 1935/2004, Regulation 2023/2006 or these Regulations or without reasonable excuse fails to provide any assistance or information that that person may reasonably require; or
- (c) in purported compliance with any requirement mentioned in sub paragraph (b), knowingly or recklessly supplies information that is false or misleading in any material particular,

is guilty of an offence.

(2) Any person guilty of an offence under these Regulations is liable—

- (a) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both;
- (b) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 6 months or to both.

(3) No prosecution for an offence under these Regulations shall be begun after the expiry of—

- (a) three years from the commission of the offence; or
- (b) one year from the date on which evidence sufficient in the opinion of the prosecutor to warrant proceedings comes to the knowledge of the prosecutor,

whichever is the earlier.

(4) For the purposes of paragraph (3), 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.

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

General defences

14.—(1) In any proceedings for an offence under these Regulations it shall, subject to paragraph (5), be a defence to prove that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the accused or by a person under the accused's control.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under these Regulations who did not—

- (a) prepare the material or article in respect of which the offence is alleged to have been committed; nor
- (b) import it into the United Kingdom,

shall be taken to have established the defence provided by paragraph (1) if the requirements of paragraphs (3) and (4) are satisfied.

(3) The requirements of this paragraph are satisfied if it is proved—

- (a) that the commission of the offence was due to the act or default of some other person who was not under the accused's control, or to reliance on information supplied by such a person;
- (b) that either—
 - (i) the accused carried out all such checks of the material or article in question as were reasonable in all the circumstances, or
 - (ii) it was reasonable in all the circumstances for the accused to rely on checks carried out by the person who supplied the accused with that material or article; and
- (c) that the accused did not know and could not reasonably have been expected to know at the time the offence was committed that the accused's act or omission would amount to an offence under these Regulations.

(4) The requirements of this paragraph are satisfied if the offence is one of sale and it is proved—

- (a) that the commission of the offence was due to the act or default of some other person who was not under the accused's control, or to reasonable reliance on information supplied by such a person;
- (b) that the sale of which the offence consisted was not a sale under the accused's name or mark; and
- (c) that the accused did not know and could not reasonably be expected to know at the time the offence was committed that the accused's act or omission would amount to an offence under these Regulations.

(5) If in any case the defence provided by this regulation involves the allegation that the commission of the offence was due to the act or default of another person, or to reliance on information supplied by another person, the accused shall not without leave of the court be entitled to rely on that defence unless at the earlier of—

- (a) a date 7 days before the trial diet (not being a notional trial diet); or
- (b) a date 28 days after the first appearance of the accused before a court in connection with the alleged offence,

the accused has served on the prosecutor a written notice giving such information identifying or assisting in the identification of that other person as was then in the possession of the accused.

Enforcement

15.—(1) Subject to paragraph (2) it shall be the duty of each food authority within its area to execute and enforce—

- (a) the provisions of Regulation 1935/2004 mentioned in regulation 4,
- (b) the provisions of Regulation 2023/2006 mentioned in regulation 5, and
- (c) these Regulations.

(2) In addition, the Food Standards Agency may, if it considers it appropriate to do so, execute and enforce the provisions of Articles 16(1) and 17(2).

Procedure where a sample is to be analysed

16.—(1) An authorised officer who has procured a sample under section 29 of the Act and who considers it should be analysed shall divide the sample into three parts.

(2) If the sample consists of sealed containers and opening them would, in the opinion of the authorised officer, impede a proper analysis, the authorised officer shall divide the sample into parts by putting the containers into three lots, and each lot shall be treated as being a part.

(3) The authorised officer shall—

- (a) if necessary place each part in a suitable container and seal it;
- (b) mark each part or container;
- (c) as soon as reasonably practicable, give one part to the owner and notify the owner in writing that the sample will be analysed;
- (d) submit one part for analysis in accordance with section 30 of the Act; and
- (e) retain one part for future submission under regulation 17.

Secondary analysis by the Government Chemist

17.—(1) Where a sample has been retained under regulation 16 and—

- (a) a decision has been made to send a report to the procurator fiscal or proceedings have been commenced against a person for an offence under these Regulations; and
- (b) the result of the analysis carried out in accordance with regulation 16(3)(d) is to be adduced as evidence,

paragraphs (2) to (6) apply.

(2) The authorised officer—

- (a) may of the officer's own volition prior to a report being sent to the procurator fiscal; and
- (b) shall—

- (i) if requested by the prosecutor;
- (ii) if the court so orders on the application of the prosecutor or the accused; or
- (iii) if requested by the accused (subject to paragraph (5)),

send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist shall analyse the part sent under paragraph (2) and where the analysis is carried out—

- (a) under paragraph (2)(a) or (b)(i) or (iii), provide the authorised officer; or
- (b) under paragraph (2)(b)(ii), provide the prosecutor and the accused,

with a certificate of analysis.

(4) The authorised officer shall immediately on receipt of the Government Chemist's certificate of analysis under paragraph 3(a) supply the prosecutor and the accused with a copy.

(5) Where a request is made under paragraph (2)(b)(iii) the authorised officer may give notice in writing to the accused requesting payment of a fee specified in the notice in respect of the functions under paragraph (3), and in the absence of agreement by the accused to pay the fee the authorised officer may refuse to comply with the request.

(6) Any certificate of the results of analysis transmitted by the Government Chemist shall be signed by or on behalf of the Government Chemist, but the analysis may be carried out by any person under the direction of the person who signs the certificate.

(7) Any certificate transmitted by or on behalf of the Government Chemist in accordance with paragraph (6) shall be taken as sufficient evidence of the facts stated therein unless any party to the proceedings requests that the person by whom the certificate is signed be called as a witness.

(8) In this regulation “accused” includes a person in respect of whom the authorised officer intends to submit a report to the procurator fiscal.

Application of various provisions of the Act

18.—(1) The following provisions of the Act 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 2 (extending meaning of “sale” etc);
- (b) section 20 (offences due to fault of another person);
- (c) section 30(8) (which relates to documentary evidence);
- (d) section 36 (offences by bodies corporate); and
- (e) section 36A (offences by Scottish partnerships).

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the reference in subsection (1) to the Act shall be construed as including a reference to Regulation 1935/2004 or, as appropriate, to Regulation 2023/2006.

(3) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act shall be construed as including a reference to Regulation 1935/2004 or, as appropriate, to Regulation 2023/2006, and to these Regulations—

- (a) section 3 (presumptions that food is intended for human consumption) with the modifications that the references to “sold” and “sale” shall be deemed to include references to “placed on the market” and “placing on the market” respectively; and
- (b) section 44 (protection of officers acting in good faith) with the modification that references to “a food authority” shall include “the Food Standards Agency”.

Amendment of the Ceramic Articles in Contact with Food (Scotland) Regulations 2006

19. In the Ceramic Articles in Contact with Food (Scotland) Regulations 2006(1), in regulation 8(2), for the figure “2006” substitute the figure “2005”.

Amendment of the Food Safety (Sampling and Qualifications) Regulations 1990

20. In the Food Safety (Sampling and Qualifications) Regulations 1990(2), in Schedule 1 (provisions to which those Regulations do not apply) for the title and reference of the Materials and Articles in Contact with Food (Scotland) Regulations 2005 substitute the title and reference of these Regulations.

Consequential amendments to the 2006 Regulations

21.—(1) The 2006 Regulations are amended in accordance with paragraphs (2) and (3).

(1) [S.S.I. 2006/230](#).

(2) [S.I.1990/2463](#), relevantly amended by [S.S.I. 2006/314](#).

(2) In paragraph (1) of regulation 2 (interpretation) omit the definition of “the 2005 Regulations”.

(3) In paragraph (1)(b) of regulation 11 (method of testing the capability of materials or articles to transfer constituents, and methods of analysis), for the expression “regulation 7(2) of the 2005 Regulations” substitute “regulation 9(2) of the Materials and Articles in Contact with Food (Scotland) Regulations 2007(3).”

Revocations

22. The following Regulations or parts thereof are revoked—

- (a) Article 3(3) of the Food Safety Act 1990 (Consequential Modifications) (No. 2) (Great Britain) Order 1990(4);
- (b) The Materials and Articles in Contact with Food (Scotland) Regulations 2005(5); and
- (c) Regulation 24 of the 2006 Regulations.

(3) [S.S.I. 2007/471](#).

(4) [S.I. 1990/2487](#) to which there are amendments not relevant to these regulations.

(5) [S.S.I. 2005/243](#).