
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 418

**AGRICULTURE
FOOD**

The Beef and Veal Labelling (Scotland) Regulations 2008

Made - - - - 16th December 2008
*Laid before the Scottish
Parliament* - - - - 17th December 2008
Coming into force - - 25th January 2009

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972⁽¹⁾ and all other powers enabling them to do so.

They have carried out the consultation 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⁾.

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act, and it appears to the Scottish Ministers that it is expedient for the references in the Regulations to Community instruments to be references to those instruments as amended from time to time.

Citation and commencement

1. These Regulations may be cited as the Beef and Veal Labelling (Scotland) Regulations 2008 and come into force on 25th January 2009.

Extent

2. These Regulations extend to Scotland only.

(1) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3) and the Legislative and Regulatory Reform Act 2006 (c. 51) (“the 2006 Act”), section 27(1)(a). Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act. The functions conferred upon the Minister of the Crown under section 2(2), insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(2) O.J. No. L 31, 1.2.2002, p.1, as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.2003, p.4), Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 8.4.2006, p.3) and Commission Regulation (EC) No. 202/2008 (O.J. No. L 60, 5.3.2008, p.17).

Interpretation

3.—(1) In these Regulations—

“authorised officer” means any person (whether or not an officer of the Scottish Ministers or of a local authority) who is authorised for the purposes of these Regulations by the Scottish Ministers or a local authority;

“Commission Regulation 1141/97” means Commission Regulation (EC) No. 1141/97⁽³⁾ laying down detailed rules for the application of Council Regulation (EC) No. 820/97⁽⁴⁾ as regards the labelling of beef and beef products as amended by Commission Regulations (EC) Nos. 2406/97⁽⁵⁾ and 824/98⁽⁶⁾;

“Commission Regulation 1825/2000” means Commission Regulation (EC) No. 1825/2000⁽⁷⁾ laying down detailed rules for the application of Regulation (EC) No. 1760/2000 of the European Parliament and of the Council as regards the labelling of beef and beef products, as amended by Commission Regulation (EC) 275/2007⁽⁸⁾;

“Council Regulation 1234/2007” means Council Regulation (EC) No. 1234/2007⁽⁹⁾ establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products, as amended by Council Regulations (EC) Nos. 247/2008⁽¹⁰⁾, 248/2008⁽¹¹⁾, 361/2008⁽¹²⁾ and 470/2008⁽¹³⁾;

“Commission Regulation 566/2008” means Commission Regulation (EC) No. 566/2008⁽¹⁴⁾ laying down detailed rules for the application of Council Regulation (EC) No. 1234/2007 as regards the marketing of the meat of bovine animals aged 12 months or less;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994⁽¹⁵⁾; and

“Regulation 1760/2000” means Regulation (EC) No. 1760/2000⁽¹⁶⁾ of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and repealing Council Regulation (EC) No. 820/97, as amended by Council Regulation (EC) No. 1791/2006⁽¹⁷⁾.

(2) Any reference in these Regulations to a Community instrument is a reference to that instrument as amended from time to time.

Authorities responsible for enforcement

4.—(1) The Scottish Ministers shall be the competent authority for the purposes of—

- (a) Commission Regulation 1141/97;
- (b) Title II of Regulation 1760/2000 (labelling of beef and beef products);

(3) O.J. No. L 165, 24.6.1997, p.7.

(4) O.J. No. L 117, 7.5.1997, p.1. Council Regulation (EC) No. 820/97 (“Regulation 820/97”) was repealed by Regulation (EC) No. 1760/2000 of the European Parliament and of the Council (“Regulation 1760/2000”). Under Article 24(2) of Regulation 1760/2000, references to Regulation 820/97 are to be construed as references to Regulation 1760/2000, read in accordance with the correlation table in the Annex to Regulation 1760/2000.

(5) O.J. No. L 332, 4.12.1997, p.36.

(6) O.J. No. L 117, 21.4.1998, p.4.

(7) O.J. No. L 216, 26.8.2000, p.8.

(8) O.J. No. L 76, 16.3.2007, p.12.

(9) O.J. No. L 299, 16.11.2007, p.1.

(10) O.J. No. L 76, 19.3.2008, p.1.

(11) O.J. No. L 76, 19.3.2008, p.6.

(12) O.J. No. L 121, 7.5.2008, p.1.

(13) O.J. No. L 140, 30.5.2008, p.1.

(14) O.J. No. L 160, 19.6.2008, p.22.

(15) 1994 c. 39.

(16) O.J. No. L 204, 11.8.2000, p.1.

(17) O.J. No. L 363, 20.12.2006, p.1.

- (c) Commission Regulation 1825/2000;
 - (d) Article 113b of, and Annex XIa to, Council Regulation 1234/2007 (marketing of the meat of bovine animals aged 12 months or less); and
 - (e) Commission Regulation 566/2008.
- (2) These Regulations shall be enforced by—
- (a) the Scottish Ministers, for the purposes of ascertaining whether there is or has been any contravention of these Regulations in slaughterhouses, cutting plants or wholesalers; and
 - (b) local authorities, for the purposes of ascertaining whether there is or has been any contravention of these Regulations in places other than in slaughterhouses, cutting plants or wholesalers.

Enforcement of marketing and labelling requirements

5.—(1) Any person engaged in the marketing of beef or veal who fails to comply with any provision listed in Schedule 1 to these Regulations (Community marketing and labelling provisions) is guilty of an offence.

(2) Where beef or veal has been labelled and marketed in a manner that does not comply with these Regulations, an authorised officer may serve a notice on the person in possession of the beef or veal requiring its removal from sale until the label is removed or until it is re-labelled in accordance with these Regulations.

(3) A notice under paragraph (2) may authorise the beef or veal to be sent directly for processing into products other than those indicated in the first indent of Article 12 of Regulation 1760/2000 (definition of “beef”).

(4) Any person who fails to comply with a notice under paragraph (2) is guilty of an offence.

(5) In paragraph (1) “marketing” includes the supply of beef or veal, otherwise than on sale, in the course of a business.

Powers of authorised officers

6.—(1) The Scottish Ministers or a local authority may appoint any individual to be an authorised officer for the purposes of these Regulations.

(2) Schedule 2 (powers of authorised officers) has effect.

Offences by bodies corporate

7.—(1) A person is guilty of an offence if conditions A and B are met.

(2) Condition A is met if an offence under these Regulations is committed by—

- (a) a body corporate; or
- (b) a Scottish partnership.

(3) Condition B is met if it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—

- (a) a relevant person; or
- (b) a person purporting to act in the capacity of a relevant person.

(4) In paragraph (3), “relevant person” means—

- (a) in relation to a body corporate—
 - (i) a director, manager, secretary or other similar officer of the body;
 - (ii) where the affairs of the body are managed by its members, a member; and

(b) in relation to a Scottish partnership, a partner.

(5) Where paragraph (1) applies, that person as well as the body corporate or partnership (as the case may be) is guilty of the offence and is liable to be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, the provisions of this regulation apply in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

Defence of due diligence

8.—(1) In any proceedings for an offence under these Regulations, it is a defence for the person charged (in this Regulation, "the person") to prove that all due diligence was exercised to avoid the commission of the offence.

(2) Paragraph (3) applies if the defence provided by paragraph (1) above involves the allegation that the commission of the offence was due to the act or omission of another person (in this Regulation, "the other person").

(3) Where this paragraph applies, the person is not entitled to rely on the defence provided by paragraph (1) unless the person has—

- (a) leave of the court; or
- (b) served on the prosecutor written notice giving information identifying, or which assists in identifying, the other person.

(4) The notice referred to in paragraph (3)(b) must only give information in the possession of the person at the time the person was charged.

(5) The notice in paragraph (3)(b) must be served—

- (a) at least seven clear days before the hearing; or
- (b) where the person has previously appeared before a court in connection with the alleged offence, within one month of that first appearance.

(6) In paragraph (5)(b), the reference to appearing before a court includes a reference to being brought before a court.

Penalties

9.—(1) A person guilty of an offence under these Regulations (other than under paragraph 4 of Schedule 2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) A person guilty of an offence under paragraph 4 of Schedule 2 to these Regulations (obstruction of authorised officers) is liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding six months or to both.

Revocation

10. The Beef Labelling (Enforcement) (Scotland) Regulations 2001(**18**) are revoked.

St Andrew's House, Edinburgh
16th December 2008

RICHARD LOCHHEAD
A member of the Scottish Executive

SCHEDULE 1

Regulation 5(1)

Community marketing and labelling provisions

1. The following provisions of Commission Regulation 1141/97–
 - (i) Article 2 (provision of an identification and registration system);
 - (ii) Article 3(1) (access to premises and records); and
 - (iii) Article 3(4) (provision of information to the competent authority).
2. The following provisions of Regulation 1760/2000–
 - (i) Article 11 (requirement to label);
 - (ii) Article 13(1) (compulsory labelling: general rules);
 - (iii) Article 13(2) (compulsory labelling: indications on the label);
 - (iv) Article 13(5) (compulsory labelling: additional information on the label);
 - (v) Article 14 (derogations from the compulsory labelling system);
 - (vi) Article 15 (compulsory labelling of beef from third countries);
 - (vii) Article 16(4) (voluntary labelling); and
 - (viii) Article 17(1) (voluntary labelling of beef from third countries).
3. The following provisions of Commission Regulation 1825/2000–
 - (i) Article 1 (traceability);
 - (ii) Article 2 (labelling where information is not available);
 - (iii) Article 4 (size and composition of a group);
 - (iv) Article 5(2) (minced beef);
 - (v) Article 6(3) (beef in small retail packages); and
 - (vi) Article 7 (checks).
4. The following provision of Council Regulation 1234/2007–
 - (i) Article 113b (marketing of the meat of bovine animals aged 12 months or less);
 - (ii) paragraph II of Annex XIa (classification of bovine animals aged 12 months or less at the slaughterhouse);
 - (iii) paragraph III of Annex XIa (sales descriptions);
 - (iv) paragraph IV of Annex XIa (compulsory information on the label);
 - (v) paragraph V of Annex XIa (optional information on the label);
 - (vi) paragraph VI of Annex XIa (recording); and
 - (vii) paragraph VIII of Annex XIa (meat imported from third countries).
5. The following provision of Commission Regulation 566/2008–
 - (i) Article 4(1) (compulsory information on the label);
 - (ii) Article 4(2) (indication of age); and
 - (iii) Article 5 (recording of information).

SCHEDULE 2

Regulation 6(2)

Powers of authorised officers

Powers of entry

1.—(1) An authorised officer has the right at all reasonable hours to enter any premises (excluding premises used only as a dwelling) for the purpose of ascertaining whether—

- (a) any contravention of any provisions of these Regulations has taken place; or
- (b) there is any evidence of any contravention of any provisions of these Regulations.

(2) The authorised officer must produce, if required, a duly authenticated document showing the officer's authority under sub-paragraph (1).

(3) If—

- (a) a justice of the peace or a sheriff, sworn (on oath), is satisfied that there is reasonable ground for entry into any premises (excluding premises used only as a dwelling) for any purpose mentioned in sub-paragraph (1) above; and
- (b) at least one of the grounds in sub-paragraph (4) applies,

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

(4) The grounds referred to in sub-paragraph (3)(b) are—

- (a) admission to the premises has been refused, (or a refusal is anticipated), and notice of the intention to apply for a warrant has been given to the occupier;
- (b) a request for admission to the premises, or the giving of notice of the intention to apply for a warrant, would defeat the object of the entry;
- (c) the case is one of urgency; or
- (d) the premises are unoccupied or the occupier is temporarily absent.

(5) Every warrant granted under sub-paragraph (3) shall continue in force for a period of one month.

(6) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it—

- (a) may be accompanied by other persons as considered necessary; and
- (b) on leaving any unoccupied premises which the officer has entered by virtue of such a warrant, must leave them effectively secured against unauthorised entry as the officer found them.

(7) Where land or premises are damaged in the exercise of a power of entry conferred by this paragraph, compensation in respect of that land or those premises may be recovered by any person interested in that land or those premises from the Scottish Ministers or the relevant local authority, as the case may be.

(8) In sub-paragraph (3), “justice of the peace” means a justice of the peace appointed under section 67(1) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007⁽¹⁹⁾.

Powers of inspection and sampling etc.

2.—(1) An authorised officer entering any premises by virtue of paragraph 1 above, or of a warrant issued under it, may—

⁽¹⁹⁾ 2007 asp 6.

- (a) inspect any beef or veal present on those premises;
- (b) take samples (and, if necessary, send the samples for laboratory testing) from any beef or veal present on those premises;
- (c) inspect any beef or veal label and relevant business records in whatever form they are held;
- (d) take copies of these labels and records;
- (e) remove and retain any such label, beef or veal and records which are believed to be required as evidence in proceedings under any of the provisions of these Regulations;
- (f) have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with any such records mentioned in sub-paragraph (c) above, and require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford such assistance as that person may reasonably require; and
- (g) where records are kept by means of a computer, require the records to be produced in a visible and legible form in which they may be taken away.

Protection of authorised officers acting in good faith

3.—(1) No authorised officer shall be personally liable in respect of any act—

- (a) in the execution or purported execution of these Regulations; and
- (b) within the scope of that officer's employment,

if the authorised officer acted in the honest belief that these Regulations required the act to be done.

(2) Nothing in sub-paragraph (1) above shall be construed as relieving the Scottish Ministers or the relevant local authority from any liability in respect of the acts of authorised officers.

(3) Where an action has been brought against an authorised officer in respect of an act—

- (a) in the execution or purported execution of these Regulations; and
- (b) outside the scope of that officer's employment,

the Scottish Ministers or the relevant local authority may indemnify the authorised officer against the whole or part of any damages which that officer has been ordered to pay or any costs which that officer may have incurred if they are satisfied that that officer honestly believed that the act complained of was within the scope of that officer's employment.

Obstruction of authorised officers

4. It is an offence—

- (a) intentionally to obstruct an authorised officer acting in the execution of these Regulations;
- (b) knowingly to give any information that is false or misleading to any authorised officer acting in the execution of these Regulations;
- (c) intentionally to fail to disclose any material particular to any authorised officer acting in the execution of these Regulations; or
- (d) to fail, without reasonable excuse—
 - (i) to give any assistance or information that any authorised officer acting in the execution of these Regulations may require; or
 - (ii) to produce any record that any authorised officer acting in the execution of these Regulations may require to be produced,

for the performance of that authorised officer's functions under these Regulations.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Beef Labelling (Enforcement) (Scotland) Regulations 2001 (S.S.I.2001/252) with Regulations setting out requirements for the labelling of veal as well as beef.

They continue to enforce Title II of Regulation (EC) No. 1760/2000 of the European Parliament and of the Council establishing a system for the identification and registration of bovine animals and regarding the labelling of beef and beef products and subsidiary Commission Regulations.

They also enforce the provisions relating to veal of Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products as well as the provisions of Commission Regulation (EC) No. 566/2008 laying down detailed rules for the application of Council Regulation (EC) No. 1234/2007 as regards the marketing of the meat of bovine animals aged 12 months or less.

The Scottish Ministers enforce these Regulations in slaughterhouses, cutting plants and wholesalers, the relevant local authority enforces these Regulations in all other places (regulation 4(2)).

It is an offence:

for persons engaged in the marketing of beef or veal to fail to comply with the applicable requirements of the compulsory and voluntary beef or veal labelling schemes in Schedule 1 to the Regulations (regulation 5(1)); or

to fail to comply with the requirements of a notice served by an authorised officer requiring the removal from sale of beef or veal which has been wrongly labelled or marketed (regulation 5(4)).

Both offences are punishable on summary conviction to a fine not exceeding level 5 on the standard scale, currently £5,000 (regulation 9(2)).

The Regulations confer powers of entry, inspection, sampling and enforcement on authorised officers (regulations 6(2) and Schedule 2) and make provision for the protection of officers acting in good faith (Schedule 2, paragraph 3). It is an offence to obstruct an authorised officer acting in the execution of the Regulations (Schedule 2, paragraph 4), punishable on summary conviction by a fine not exceeding level 5 on the standard scale or imprisonment for up to six months (regulation 9(2)).

Regulation 7 makes provision for offences by bodies corporate. Regulation 8 provides for a defence of due diligence (regulation 8).

A Regulatory Impact Assessment (RIA) was prepared in respect of these Regulations. Copies of the RIA can be obtained from the Scottish Government Rural Directorate, Pentland House, 47 Robb's Loan, Edinburgh, EH14 1TY. Copies have been placed in the Scottish Parliament Information Centre.