
SCOTTISH STATUTORY INSTRUMENTS

2009 No. 215

The Contaminants in Food (Scotland) Regulations 2009

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Contaminants in Food (Scotland) Regulations 2009 and come into force on 1st July 2009.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

“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;

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

“Commission Regulation 629/2008” means Commission Regulation (EC) No. 629/2008 amending Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs(1); and

“Commission Regulation 124/2009” means Commission Regulation (EC) No. 124/2009 setting maximum levels for the presence of coccidiostats or histomonostats in food resulting from the unavoidable carry-over of these substances in non-target feed(2).

(2) Other expressions used in these Regulations and in the Commission Regulation or in Commission Regulation 124/2009 have the same meaning in these Regulations as in those Regulations.

(3) Unless indicated otherwise, any reference to a numbered Article is a reference to the Article so numbered in the Commission Regulation.

(4) Any reference to the Annex is a reference to the Annex to the Commission Regulation as that Annex may be amended from time to time, and any reference to the Commission Regulation is to be construed accordingly.

Offences and penalties

3.—(1) Subject to the transitional arrangements contained in Article 1 and in Article 2 of Commission Regulation 629/2008, a person who contravenes or fails to comply with any of the Community provisions specified in paragraph (2) is guilty of an offence.

(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 the Annex and, in the case of groundnuts, nuts, dried fruit and maize, with Article 4;

(1) O.J. No. L 173, 3.7.08, p.6.

(2) O.J. No. L 40, 11.2.09, p.7.

- (b) Article 3 (prohibitions on use, mixing and detoxification);
 - (c) Article 1(1) of Commission Regulation 124/2009 (prohibitions on marketing or mixing foods containing coccidiostats or histomonostats at levels in excess of prescribed limits).
- (3) 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.

Enforcement and competent authorities

4.—(1) It shall be the duty of each food authority within its area to execute and enforce these Regulations, the Commission Regulation and Commission Regulation 124/2009.

(2) The competent authority for the purposes of—

- (a) Article 2(2) (justification by food business operators of concentration or dilution factors); and
- (b) Article 1(1) of Commission Regulation 124/2009 (relating to the duty to investigate the reasons for the contamination),

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 (selling food not of the nature or substance or quality demanded) or 15 (falsely describing or presenting food);
- (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) of this regulation;
- (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) and (c) of the Contaminants in Food (Scotland) Regulations 2009 (“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 law; 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 the food complies with the Community requirements and—
- (a) if satisfied that it does comply, shall forthwith withdraw the notice;
 - (b) if 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) above, 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 in connection with regulation 3(2)(a) or (c) of the Contaminants in Food (Scotland) Regulations 2009 might be liable to 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) above 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) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

(3) The expression “authorised officer” which is 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 meaning that that expression bears in these Regulations.

Consequential amendment

6. In Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 1990(3) (provisions to which those Regulations do not apply), for the entry relating to the Contaminants in Food (Scotland) Regulations 2007(4), substitute—

“The Contaminants in Food (Scotland) Regulations 2009 (to the extent that a sample falls to be prepared and analysed in [S.S.I. 2009/215](#).”

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

(4) S.S.I. 2007/29.

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

accordance with the Commission Regulation
as that expression is defined in those
Regulations)

Revocation

7. The Contaminants in Food (Scotland) Regulations 2007 and the Contaminants in Food (Scotland) Amendment Regulations 2007(5) are both revoked.

St Andrew's House,
Edinburgh
3rd June 2009

SHONA ROBISON
Authorised to sign by the Scottish Ministers