
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 327

**The Materials and Articles in Contact
with Food (Scotland) Regulations 2010**

PART 5

General

Offences and penalties

13.—(1) Any person who—

- (a) contravenes the provisions of regulation 8, 10(3), (4), (6), (7) or (8) or 11(1) or (3);
- (b) intentionally obstructs any person acting in the execution of Regulation 1935/2004, Regulation 2023/2006, Regulation 450/2009 or these Regulations or without reasonable excuse fails to provide any assistance or information 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) in the case of an offence mentioned in paragraph (1)(a) or (c) or in regulation 4, 5 or 6—
 - (i) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or both;
 - (ii) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 12 months or both; and
- (b) in the case of an offence mentioned in paragraph (1)(b) on summary conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding level 5 on the standard scale or both.

(3) Nothing in paragraph (1)(b) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate them.

Enforcement

14.—(1) Each food authority in its area shall 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;
- (c) the provisions of Regulation 450/2009 mentioned in regulation 6; and
- (d) these Regulations.

(2) The Food Standards Agency may execute and enforce the provisions of—

- (a) Articles 16(1) and 17(2) of Regulation 1935/2004; and

- (b) Article 13 of Regulation 450/2009.

Offences by corporate bodies or Scottish partnerships

15.—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
- (b) any person purporting to act in such a capacity,

that individual as well as the body corporate shall be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) Where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a partner, that partner as well as the partnership shall be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

Offences due to the act or default of a third party

16. Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person.

Time limit for prosecutions

17. No prosecution for an offence under these Regulations shall be begun after the expiry of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.

General defences

18.—(1) In any proceedings for an offence under these Regulations it shall, subject to paragraph (5), be a defence to prove that the person accused (“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 control of the accused.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under regulation 4, 6(a) to (f) or 13(1)(a) 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) or (4) are satisfied.

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

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reliance on information supplied by such a person;
- (b) 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) the accused did not know and had no reason to suspect at the time the offence was committed that the 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 that—
- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reliance on information supplied by such a person;
 - (b) the sale of which the offence consisted was not a sale under the name or mark of the accused; and
 - (c) the accused did not know and could not reasonably be expected to know at the time the offence was committed that the 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—
- (a) at least 7 clear days before the hearing; and
 - (b) where he has previously appeared before the court in connection with the alleged offence, within 28 days of his first such appearance,

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.

Procedure where a sample is to be analysed

19.—(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 is 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 20.

Secondary analysis by the Government Chemist

20.—(1) Where a sample has been retained under regulation 19 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 19(3)(d) is to be adduced as evidence,

paragraphs (2) to (8) 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

21.—(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 (extended meaning of "sale" etc);
- (b) section 30(8) (which relates to documentary evidence).

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the reference to the Act in subsection (1) shall be construed as including a reference to Regulation 1935/2004, Regulation 2023/2006 or Regulation 450/2009 as appropriate.

(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, Regulation 2023/2006 or Regulation 450/2009, as appropriate, and to these Regulations—

- (a) section 3 (presumptions that food 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;
- (b) section 44 (protection of officers acting in good faith).

Consequential amendment to the Food Safety (Sampling and Qualifications) Regulations 1990

22. In the Food Safety (Sampling and Qualifications) Regulations 1990⁽¹⁾, 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 2007 substitute the title and reference of these Regulations.

Consequential amendment to the 2009 Regulations

23.—(1) The 2009 Regulations are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2 (1) (interpretation) omit the definition of “the 2007 Regulations”.

(3) In paragraph (1)(b) of regulation 13 (method of testing the capability of plastic materials or articles to transfer constituents, and methods of analysis), for the expression “2007 Regulations” substitute “Materials and Articles in Contact with Food (Scotland) Regulations 2010”.

Amendment to the Food Labelling Regulations 1996

24.—(1) The Food Labelling Regulations 1996⁽²⁾ are amended in accordance with paragraph (2).

(2) In regulation 2(1) (interpretation), for the definition of “ingredient” substitute the following definition—

““ingredient” means—

- (a) any substance, including any additive or food enzyme and any constituent of a compound ingredient, which is used in the preparation of a food and which is still present in the finished product, even if in altered form; or
- (b) any released active substance within the meaning of Article 3(f) of [Commission Regulation \(EC\) No. 450/2009](#) on active and intelligent materials and articles intended to come into contact with food⁽³⁾,

and a “compound ingredient” shall be composed of two or more such substances;”.

Revocations

25. The following are revoked—

- (a) the Materials and Articles in Contact with Food (Scotland) Regulations 2007⁽⁴⁾;
- (b) regulation 23 of the 2009 Regulations; and
- (c) the Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2009⁽⁵⁾.

(1) [S.I. 1990/2463](#), as relevantly amended by [S.S.I. 2007/471](#).

(2) [S.I. 1996/1499](#). The definition of ingredient was previously amended by [S.S.I. 2009/435](#).

(3) O.J. No. L 135, 30.5.2009, p.3.

(4) [S.S.I. 2007/471](#), as amended by [S.S.I. 2009/30](#) and [S.S.I. 2009/426](#).

(5) [S.S.I. 2009/426](#).