
SCOTTISH STATUTORY INSTRUMENTS

2012 No. 318

**The Materials and Articles in Contact
with Food (Scotland) Regulations 2012**

PART 9

Enforcement

Offences and penalties

19.—(1) Any person who contravenes the provisions of regulation 10(3) or (4), 12(8) or 18(2) commits an offence.

(2) Any person who intentionally obstructs any person acting in the execution of Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009, Regulation 10/2011 or these Regulations commits an offence.

(3) Any person who, without reasonable excuse, fails to provide any assistance or information that person may reasonably require for the performance of their functions under the Regulations mentioned in paragraph (2) or fails to comply with regulation 10(6) commits an offence.

(4) Any person who, in purported compliance with any requirement mentioned in paragraph (3), knowingly or recklessly supplies information that is false or misleading in any material particular, commits an offence.

(5) Any person who commits an offence under these Regulations is liable—

(a) in the case of an offence created by paragraph (1) or (4) or regulation 4(3), 5, 7(1), 14(1) or 16(4)—

(i) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or both; or

(ii) on summary conviction to a fine not exceeding the statutory maximum; and

(b) in the case of an offence created by paragraph (2) or (3) or regulation 7(2) or 14(2), on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Nothing in paragraph (2) or (3) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate them.

Execution and enforcement

20.—(1) Each food authority in its area must execute and enforce—

(a) Regulation 1935/2004, Regulation 1895/2005, Regulation 450/2009 and Regulation 10/2011; and

(b) except in relation to the provisions referred to in paragraph (3), these Regulations.

(2) The Food Standards Agency may also 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.

(3) Each food authority in its area must execute and enforce the provisions of Regulation 2023/2006 specified in regulation 5 and these Regulations.

Offences by corporate bodies or Scottish partnerships

21.—(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 is deemed to have committed 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 have committed that offence and liable to be proceeded against and punished accordingly.

Offences due to the act or default of a third party

22. 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 has also committed 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

23.—(1) No prosecution for an offence under these Regulations is to be begun after the expiry of 3 years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.

(2) Paragraph (1) does not apply to an offence under regulation 7(2), 14(2) or 19(2) or (3).

General defences

24.—(1) In any proceedings for an offence under these Regulations it is, subject to paragraph (5), 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(3), 7(1), 14(1), 16(4) or 19(1) who did not import or prepare the material or article in respect of which the offence is alleged to have been committed is to 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 placing on the market 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 placing on the market of which the offence consisted was not done 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 is not without leave of the court entitled to rely on that defence unless—
- (a) at least 7 clear days before the hearing; and
 - (b) where the accused has previously appeared before the court in connection with the alleged offence, within one month of the 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

25.—(1) An authorised officer who has procured a sample under section 29 of the Act and who considers it should be analysed must divide the sample into 3 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 must divide the sample into parts by putting the containers into 3 lots, and each lot is to be treated as being a part.

- (3) The authorised officer must—
- (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 26.

Secondary analysis by the Government Chemist

26.—(1) Where a sample has been retained under regulation 25(3)(e) 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 25(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; or
- (b) must—
 - (i) if requested by the prosecutor;
 - (ii) if the court so orders; or
 - (iii) (subject to paragraph (6)) if requested by the accused,

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

(3) The Government Chemist must analyse the part sent under paragraph (2) and send to the authorised officer a certificate specifying the results of the analysis.

(4) Any certificate of the results of analysis transmitted by the Government Chemist must 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.

(5) The authorised officer must immediately on receipt supply the prosecutor and the accused with a copy of the Government Chemist's certificate of analysis.

(6) 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 to defray some or all of the Government Chemist's charges for performing the functions under paragraph (3), and in the absence of agreement by the accused to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

(7) Any certificate transmitted by or on behalf of the Government Chemist in accordance with paragraph (4) is to 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, "the accused" includes a person in respect of whom an authorised officer intends to submit a report to the procurator fiscal.

Application of various provisions of the Act

27.—(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 of it is to be construed as a reference to these Regulations—

- (a) section 2 (extending meaning of "sale" etc); and
- (b) section 30(8) (analysis etc. of samples)(1).

(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) is to be construed as including a reference to Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009 or Regulation 10/2011, 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 is to be construed as including a reference to Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009 or Regulation 10/2011, 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" are to 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).

(1) Section 30(8) sets out the evidential status of certificates of analysis and examination provided by food analysts and examiners.

