

2012 No. 75

FOOD

The Food Hygiene (Scotland) Amendment Regulations 2012

Made - - - - *29th February 2012*

Laid before the Scottish Parliament *2nd March 2012*

Coming into force - - *1st April 2012*

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(a) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for any reference to an EU instrument defined in Schedule 1 to be construed, in accordance with regulation 2(3), as a reference to that instrument as any Annex to it is amended from time to time.

There has been consultation as 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(b).

Citation and commencement

1. These Regulations may be cited as the Food Hygiene (Scotland) Amendment Regulations 2012 and come into force on 1st April 2012.

Amendments to the Food Hygiene (Scotland) Regulations 2006

2.—(1) The Food Hygiene (Scotland) Regulations 2006(c) are amended as follows.

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- (a) 1972 c.68 (“the 1972 Act”). Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46), section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The functions conferred on the Minister of the Crown under section 2(2), so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Insofar as not so transferred and insofar as relating to food (including drink) including the primary production of food, relevant functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849). Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act.
- (b) OJ L 31, 1.2.02, p.1 as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ L 245, 29.9.2003, p.4), Commission Regulation (EC) No. 575/2006 (OJ L 100, 8.4.2006, p.3), Commission Regulation (EC) No. 202/2008 (OJ L 60, 5.3.2008, p.17) and Regulation (EC) No. 596/2009 of the European Parliament and of the Council (OJ L 188, 18.7.2009, p.14).
- (c) S.S.I. 2006/3, as amended by S.S.I. 2006/231 and 530, 2007/11, 2008/129 and 395, 2010/69 and 2011/84 and 171.

(2) In regulation 2(1) (interpretation) for the definitions of the EU instruments appearing after the definition of “the Community Regulations” substitute—

““Decision 2006/766”, “Decision 2011/131”, “Directive 2004/41”, “Regulation 178/2002”, “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 854/2004”, “Regulation 882/2004”, “Regulation 1688/2005”, “Regulation 2073/2005”, “Regulation 2074/2005”, “Regulation 2075/2005”, “Regulation 1020/2008”, “Regulation 1021/2008”, “Regulation 219/2009”, “Regulation 596/2009”, “Regulation 669/2009”, “Regulation 1162/2009”, “Regulation 15/2011”, “Regulation 739/2011”, “Regulation 880/2011”, “Regulation 1086/2011”, “Regulation 1109/2011”, “Regulation 1169/2011”, “Regulation 1223/2011”, “Regulation 1277/2011”, “Regulation 16/2012” and “Regulation 28/2012” have the meanings respectively given to them in Schedule 1;”.

(3) After regulation 2(4) insert—

“(5) In these Regulations, any reference to an EU instrument defined in Schedule 1 is a reference to that instrument as any Annex to it is amended from time to time.”.

(4) In regulation 9(1) (remedial action notices and detention notices) omit “subject to approval under Article 4(2) of Regulation 853/2004”.

(5) After regulation 22(3) (appeals against hygiene improvement notices and remedial action notices) insert—

“(4) Where on appeal against a remedial action notice under paragraph (1) a sheriff or the Court cancels the notice, the enforcement authority shall compensate the food business operator who brought the appeal in respect of any loss suffered by reason of the food business operator’s compliance with the notice, and any dispute as to the right to or the amount of any compensation payable under this paragraph is to be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff or the Court.”.

(6) After regulation 32 (restrictions on the sale of raw milk intended for direct human consumption) insert—

“Special health mark

32A.—(1) The special health mark referred to in paragraph 9 of Chapter VI of Section I of Annex III to Regulation 853/2004 and paragraph 7 of Chapter III of Section I of Annex I to Regulation 854/2004 shall conform with Schedule 6A.

(2) No person shall place on the market minced meat, meat preparations, mechanically separated meat or meat products prepared or produced from meat derived from animals that have undergone emergency slaughter outside a slaughterhouse unless they have an identification mark which conforms with Schedule 6A and has been applied in accordance with Section I of Annex II to Regulation 853/2004.

(3) No person shall export or offer to export to other member States or to third countries minced meat, meat preparations, mechanically separated meat or meat products prepared or produced from meat derived from animals that have undergone emergency slaughter outside a slaughterhouse.

(4) No person shall place on the market minced meat, meat preparations, mechanically separated meat or meat products prepared or produced from meat derived from animals that have undergone emergency slaughter outside a slaughterhouse outside the United Kingdom.

(5) A person who contravenes or fails to comply with paragraphs (2), (3) or (4) is guilty of an offence.”.

(7) For Schedule 1 (definitions of EU legislation) substitute the Schedule set out in Schedule 1 to these Regulations.

(8) After Schedule 6 (restrictions on the sale of raw milk intended for direct human consumption) insert the Schedule set out in Schedule 2 to these Regulations.

St Andrew's House,
Edinburgh
29th February 2012

MICHAEL MATHESON
Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 2(7)

SCHEDULE SUBSTITUTED FOR SCHEDULE 1 TO THE FOOD HYGIENE (SCOTLAND) REGULATIONS 2006

“SCHEDULE 1

Regulation 2(1)

DEFINITIONS OF EU LEGISLATION

<p>“Decision 2006/766” means Commission Decision 2006/766/EC establishing the lists of third countries and territories from which imports of bivalve molluscs, echinoderms, tunicates, marine gastropods and fishery products are permitted(a) as last amended by Decision 2011/131;</p>
<p>“Decision 2011/131” means Commission Decision 2011/131/EU amending Annex II to Decision 2006/766/EC as regards the inclusion of Fiji in the list of third countries and territories from which imports of fishery products for human consumption are permitted(b);</p>
<p>“Directive 2004/41” means Directive 2004/41/EC of the European Parliament and of the Council repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC(c);</p>
<p>“Regulation 178/2002” means 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 as last amended by Regulation 596/2009;</p>
<p>“Regulation 852/2004” means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs(d) as last amended by Regulation 219/2009 and as read with Regulation 2073/2005;</p>
<p>“Regulation 853/2004” means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(e) as last amended by Regulation 16/2012 and as read with Directive 2004/41, Regulation 1688/2005, Regulation 2074/2005, Regulation 2076/2005, Regulation 1020/2008 and Regulation 1162/2009;</p>
<p>“Regulation 854/2004” means Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption(f) as last amended by Regulation 739/2011 and as read with Directive 2004/41, Regulation 2074/2005, Regulation 2075/2005, Regulation 2076/2005, Decision 2006/766, Regulation 1021/2008 and Regulation 1162/2009;</p>
<p>“Regulation 882/2004” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(g) as last amended by Regulation 880/2011 and as read with Regulation 2074/2005, Regulation 669/2009 and Regulation 1162/2009;</p>
<p>“Regulation 1688/2005” means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special</p>

(a) OJ L 320, 18.11.2006, p.53.

(b) OJ L 53, 26.2.2011, p.73.

(c) OJ L 157, 30.4.2004, p.33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (OJ L 195, 2.6.2004, p.12).

(d) OJ L 139, 30.4.2004, p.1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ L 226, 25.6.2004, p.3) which should be read with a further Corrigendum (OJ L 204, 4.8.2007, p.26).

(e) OJ L 139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ L 226, 25.6.2004, p.22) which should be read with a further Corrigendum (OJ L 204, 4.8.2007, p.26).

(f) OJ L 139, 30.4.2004, p.206. The revised text of Regulation (EC) No. 854/2004 is now set out in a Corrigendum (OJ L 226, 25.6.2004, p.83) which should be read with a further Corrigendum (OJ L 204, 4.8.2007, p.26).

(g) OJ L 165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (OJ L 191, 28.5.2004, p.1) which should be read with a further Corrigendum (OJ L 204, 4.8.2007, p.29).

guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs(a) as last amended by Regulation 1223/2011;
“Regulation 2073/2005” means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs(b) as last amended by Regulation 1086/2011;
“Regulation 2074/2005” means Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(c) as last amended by Regulation 15/2011;
“Regulation 2075/2005” means Commission Regulation (EC) No. 2075/2005 laying down specific rules on official controls for <i>Trichinella</i> in meat(d) as last amended by Regulation 1109/2011;
“Regulation 1020/2008” means Commission Regulation (EC) No. 1020/2008 amending Annexes II and III to Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin and Regulation (EC) No. 2076/2005 as regards identification marking, raw milk and dairy products, eggs and egg products and certain fishery products(e);
“Regulation 1021/2008” means Commission Regulation (EC) No. 1021/2008 amending Annexes I, II and III to Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption and Regulation (EC) No. 2076/2005 as regards live bivalve molluscs, certain fishery products and staff assisting with official controls in slaughterhouses(f);
“Regulation 219/2009” means Regulation (EC) No. 219/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Two(g);
“Regulation 596/2009” means Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four(h) as last amended by Regulation 1169/2011;
“Regulation 669/2009” means Commission Regulation (EC) No. 669/2009 implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC(i) as last amended by Regulation 1277/2011;
“Regulation 1162/2009” means Commission Regulation (EC) No. 1162/2009 laying down transitional measures for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council(j) as last amended by Regulation 28/2012 and as read with the second sub-paragraph of Article 54(3) of Regulation 1169/2011;
“Regulation 15/2011” means Commission Regulation (EU) No. 15/2011 amending Regulation (EC) No. 2074/2005 as regards recognised testing methods for detecting marine biotoxins in live bivalve molluscs(k);

(a) OJ L 271, 15.10.2005, p.17.

(b) OJ L 338, 22.12.2005, p.1, as read with the Corrigenda at OJ L 278, 10.10.2006, p.32 and OJ L 283, 14.10.2006, p.62.

(c) OJ L 338, 22.12.2005, p.27.

(d) OJ L 338, 22.12.2005, p.60.

(e) OJ L 277, 18.10.2008, p.8.

(f) OJ L 277, 18.10.2008, p.15.

(g) OJ L 87, 31.3.2009, p.109.

(h) OJ L 188, 18.7.2009, p.14.

(i) OJ L 194, 25.7.2009, p.11.

(j) OJ L 314, 1.12.2009, p.10.

(k) OJ L 6, 11.1.2011, p.3.

<p>“Regulation 739/2011” means Commission Implementing Regulation (EU) No. 739/2011 amending Annex I to Regulation (EC) No 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption(a);</p>
<p>“Regulation 880/2011” means Commission Regulation (EU) No 880/2011 correcting Regulation (EU) No 208/2011 amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council and Commission Regulations (EC) No 180/2008 and (EC) No 737/2008 as regards lists and names of EU reference laboratories(b);</p>
<p>“Regulation 1086/2011” means Commission Regulation (EU) No. 1086/2011 amending Annex II to Regulation (EC) No. 2160/2003 of the European Parliament and of the Council and Annex I to Commission Regulation (EC) No. 2073/2005 as regards <i>salmonella</i> in fresh poultry meat(c);</p>
<p>“Regulation 1109/2011” means Commission Implementing Regulation (EU) No. 1109/2011 amending Annex I to Regulation (EC) No. 2075/2005 as regards the equivalent methods for <i>Trichinella</i> testing(d);</p>
<p>“Regulation 1169/2011” means Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No. 1924/2006 and (EC) No. 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No. 608/2004(e);</p>
<p>“Regulation 1223/2011” means Commission Implementing Regulation (EU) No 1223/2011 amending Regulation (EC) No 1688/2005 as regards sampling of flocks of origin of eggs and the microbiological examination of such samples and samples of certain meat intended for Finland and Sweden(f);</p>
<p>“Regulation 1277/2011” means Commission Implementing Regulation (EU) No 1277/2011 amending Annex I to Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin(g);</p>
<p>“Regulation 16/2012” means Commission Regulation (EU) No. 16/2012 amending Annex II to Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards the requirements concerning frozen food of animal origin intended for human consumption(h);</p>
<p>“Regulation 28/2012” means Commission Regulation (EU) No 28/2012 laying down requirements for the certification for imports into and transit through the Union of certain composite products and amending Decision 2007/275/EC and Regulation (EC) No 1162/2009(i).”</p>

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- (a) OJ L 196, 28.7.2011, p.3.
(b) OJ L 228, 3.9.2011, p.8.
(c) OJ L 281, 28.10.2011, p.7.
(d) OJ L 287, 4.11.2011, p.23.
(e) OJ L 304, 22.11.2011, p.18.
(f) OJ L 314, 29.11.2011, p.12.
(g) OJ L 327, 19.12.2011, p.42.
(h) OJ L 8, 12.1.2012, p.29.
(i) OJ L 12, 14.1.2012, p.1.

SCHEDULE 2

Regulation 2(8)

SCHEDULE TO BE INSERTED AFTER SCHEDULE 6 TO THE FOOD HYGIENE (SCOTLAND) REGULATIONS 2006

“SCHEDULE 6A

Regulation 32A

THE SPECIAL HEALTH MARK

1. The special health mark shall consist of a square mark containing in legible form the following characters—

- (a) on the upper part, the letters “UK”;
- (b) in the centre, the approval number of the premises; and
- (c) on the lower part, the letter “N”.

2. When applied to carcasses, the special health mark shall measure 5.5 cm by 5.5 cm and contain letters 0.8 cm high and figures 1 cm high. The dimensions and characters of the mark may be reduced for health marking of lamb, kids and piglets.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Food Hygiene (Scotland) Regulations 2006 (“the 2006 Regulations”) by updating the definitions of certain EU instruments that are referred to in those Regulations and providing that a reference to those EU instruments shall be an ambulatory reference to them as any annex to them is amended from time to time. In addition, these Regulations extend the availability of remedial action notices, provide for compensation on successful appeal and provide for an identification mark for certain minced meat and other meat products.

These Regulations amend the 2006 Regulations to update the definitions of certain EU instruments by—

- (a) substituting definitions of certain EU instruments for the definitions of the EU instruments that currently appear after the definition of “the Community Regulations” in paragraph (1) of regulation 2 (interpretation) (regulation 2(2));
- (b) adding a provision that any reference to an EU instrument defined in Schedule 1 is a reference to that instrument as any annex to it is amended from time to time (regulation 2(3)); and
- (c) substituting a revised Schedule 1 (definitions of EU legislation) for the existing Schedule 1 (regulation 2(7)).

These Regulations further amend the 2006 Regulations by—

- (a) permitting the service of a remedial action notice in relation to an establishment not subject to approval under European food hygiene legislation (regulation 2(4));
- (b) providing for compensation to be payable to a food business operator for loss suffered by complying with a remedial action notice, which is subsequently cancelled by a court on appeal (regulation 2(5)); and
- (c) adding a new Schedule 6A (regulation 2(8)) which specifies the requirements for the special health mark referred to in paragraph 9 of Chapter VI of Section I of Annex III to Regulation 853/2004 and paragraph 7 of Chapter III of Section I of Annex I to Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption, and providing for the use of that mark and that failure to comply is an offence (regulation 2(6)).

Full business and regulatory impact assessments of the effect that this instrument will have on the costs of business and the voluntary sector have been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency (Scotland), 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ and online at www.legislation.gov.uk.

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