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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 217**

**The Contaminants in Food (Scotland) Regulations 2013**

**PART 4**

**Administration and enforcement**

**Penalties**

**6.** Anyone convicted of an offence under regulation 4(3) or regulation 5(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Enforcement and competent authorities**

**7.—(1)** It is the duty of each food authority within its area to execute and enforce these Regulations, Regulation 1881/2006 and Regulation 124/2009.

(2) Each food authority within its area is the competent authority for the purposes of—

- (a) Article 2(2) of Regulation 1881/2006 (justification by food business operators of concentration or dilution factors); and
- (b) Article 1(1) of Regulation 124/2009 (relating to the duty to investigate the reasons for the contamination).

**Application of various sections of the Food Safety Act 1990**

**8.—(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 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)(1) with the modification that—
  - (i) subsections (2) to (4) shall apply in relation to an offence under regulation 4(3) or regulation 5(1) as they apply in relation to an offence under section 14 or 15; and
  - (ii) in subsection (4) the references to “sale” are deemed to include references to “placing on the market”;
- (d) section 30(8) (which relates to documentary evidence);
- (e) section 33(1) (obstruction etc. of officers);
- (f) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above” shall be deemed to be a reference to any such requirement as is mentioned in section 33(1)(b) as applied by sub-paragraph (e);

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(1) Section 21 was amended by [S.I. 2004/3279](#).

- (g) section 33(3), with the modification that the reference to “subsection (1)(b) above” shall be deemed to be a reference to section 33(1)(b) as applied by sub-paragraph (e);
  - (h) section 35(1) (punishment of offences), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (e);
  - (i) section 35(2) and (3)(2), in so far as it relates to offences under section 33(2) as applied by sub-paragraph (f);
  - (j) section 36 (offences by bodies corporate);
  - (k) section 36A (offences by Scottish partnerships)(3); and
  - (l) 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) applies 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 any of the requirements specified in regulation 4(1) or 5(2) of the Contaminants in Food (Scotland) Regulations 2013 (“the EU 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 a 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 EU 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 a sheriff.

(4) Where an authorised officer exercises the powers conferred by subsection (2)(b) or (3)(b) above, the officer shall inform the person in charge of the food of the intention to have it dealt with by a sheriff and any person who in connection with any of the EU requirements might be liable to a prosecution in respect of the food shall, if that person attends 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 a 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 any of the EU 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.

(2) Section 35(3) was amended by [S.I. 2004/3279](#).

(3) Section 36A was inserted by the Food Standards Act [1999 \(c.28\)](#), Schedule 5, paragraph 16.

(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 expressions “authorised officer” and “food authority” which are used in section 9 of the Act so far as it applies for the purposes of these Regulations by virtue of paragraph (2) will, for those purposes, have the meanings that those expressions have in these Regulations.

### **Consequential amendment**

**9.** In Schedule 1 to the Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013<sup>(4)</sup> (provisions to which those Regulations do not apply), for columns 1 and 2 of the entry relating to the Contaminants in Food (Scotland) Regulations 2010<sup>(5)</sup> substitute—

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“The Contaminants in Food (Scotland) Regulations 2013 (to the [S.S.I. 2013/217](#).”  
extent that a sample falls to be prepared and analysed in accordance  
with Regulation 1881/2006 as that expression is defined in those  
Regulations)

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### **Revocations**

**10.** The Regulations specified in the Schedule are revoked.

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<sup>(4)</sup> [S.S.I. 2013/84](#).

<sup>(5)</sup> [S.S.I. 2010/329](#).