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SCOTTISH STATUTORY INSTRUMENTS

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**2013 No. 84**

**The Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013**

**Citation, extent and commencement**

1. These Regulations may be cited as the Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013, extend to Scotland only and come into force on 6th April 2013.

**Interpretation**

2. In these Regulations—

“the Act” means the Food Safety Act 1990;

“owner” means—

- (a) in the case of goods in transit, the consignor (or, if the consignor does not have an address in Scotland, the consignee);
- (b) in the case of goods from a vending machine—
  - (i) if the machine is marked with the name and address of its owner, and the address is in Scotland, that person; and
  - (ii) in any other case, the occupier of the premises on which the machine stands or to which it is affixed;
- (c) in any other case, the person appearing to the authorised officer to be the owner of the sample when the officer procured it;

“qualified” means qualified for the purposes of the Act.

**Sampling and analysis provisions to which these Regulations do not apply**

3. The provisions of these Regulations specified in column 3 of Schedule 1 do not apply to any sample taken under the provisions of the Regulations listed in the corresponding entry in column 1 of that Schedule.

**Qualifications of analysts**

4. A person is qualified to be a food analyst or a public analyst if that person possesses a mastership in chemical analysis awarded by the Royal Society of Chemistry.

**Qualifications of food examiners**

5.—(1) A person is qualified to be a food examiner if that person—

- (a) before the coming into force of these Regulations, was qualified to be a food examiner under regulation 4 of the Food Safety (Sampling and Qualifications) Regulations 1990(1); or

- (b) on or after that date,
  - (i) possesses a qualification listed in Part 1 of Schedule 2; and
  - (ii) has carried out examination of food over a period or periods amounting in aggregate to at least 3 years in one or more of the laboratories listed in Part 2 of that Schedule.

(2) In calculating the qualification period in paragraph (1)(b)(ii), no account is to be taken of any period spent as an undergraduate in a laboratory specified in paragraphs 4 to 6 of Part 2 of Schedule 2.

### **Restrictions applying to analysts and examiners**

6.—(1) No director, owner or employee of a food business or partner in a food business may act as a public analyst or food examiner for the area in which such business is situated.

(2) No person mentioned in paragraph (1) may analyse or examine any sample which that person knows to have been taken from the business.

### **Procedure where a sample is to be analysed**

7.—(1) An authorised officer who has procured a sample under section 29 of the Act and who considers that it should be analysed must, subject to paragraph (4), cause the sample to be divided 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 must divide the sample into parts by putting the containers into three lots, and each lot must be treated as being a part.

(3) The authorised officer must—

- (a) if necessary place each part in a suitable container and seal each container;
- (b) mark or label each part or container;
- (c) as soon as reasonably practicable give one part to the owner and give the owner notice that the sample will be analysed;
- (d) submit one part for analysis; and
- (e) retain one part for future submission under regulation 8.

(4) If the authorised officer is of the opinion that division of the parts is not reasonably practicable or is likely to impede a proper analysis the officer must, as soon as is reasonably practicable, give notice to the owner that the undivided sample will be analysed and must submit it for analysis.

### **Submission of the retained sample**

8.—(1) Where a sample has been retained under regulation 7(3)(e) and—

- (a) proceedings are intended to be or have been commenced against a person for an offence in connection with that sample; and
- (b) the prosecution intends to adduce as evidence the result of the analysis mentioned above,

paragraphs (2) to (6) apply.

(2) An authorised officer—

- (a) may of the officer's own volition;
- (b) must if requested by the prosecutor;
- (c) must if the court so orders; or
- (d) must, subject to paragraph (6), if requested by the person accused,

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

(3) The Government Chemist must analyse, or direct a food analyst to analyse, the part sent under paragraph (2) and send to the authorised officer a Government Chemist's certificate of analysis.

(4) Any certificate sent by the Government Chemist must be signed by or on behalf of the Government Chemist, but the analysis may be carried out by a person under the direction of the person who signs the certificate.

(5) On receipt of the certificate the authorised officer must, as soon as is reasonably practicable, supply a copy of it to the prosecutor and to the person accused.

(6) Where a request is made under paragraph (2)(d) the authorised officer may give notice in writing to the person 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 person accused to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

### **Procedure where a sample is to be examined**

**9.** An authorised officer who has procured a sample under section 29 of the Act and who considers that it should be examined must—

- (a) if necessary place the sample in a suitable container and seal the container;
- (b) mark or label the sample or container; and
- (c) as soon as reasonably practicable—
  - (i) submit the sample for examination; and
  - (ii) give notice to the owner that it is to be examined.

### **Certificates**

**10.**—(1) Where a sample procured under section 29 of the Act has been analysed or examined, the owner is entitled on request to be supplied with a copy of the certificate of analysis or examination by the enforcement authority.

(2) The certificate given by a food analyst or examiner under section 30(6) of the Act must be in the form set out in Schedule 3.

### **Consequential amendments**

**11.** In the following provisions, for “the Food Safety (Sampling and Qualifications) Regulations 1990” substitute “the Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013”—

- (a) paragraphs (10) and (11) of regulation 13 (analysis etc. of samples) of the Food Hygiene (Scotland) Regulations 2006(2); and
- (b) paragraphs (10) and (11) of regulation 38 (analysis etc. of samples) of the Official Feed and Food Controls (Scotland) Regulations 2009(3).

### **Revocations**

**12.** The instruments specified in column 1 of Schedule 4 are revoked to the extent specified in column 3 of that Schedule.

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(2) S.S.I. 2006/3. There are amendments to this instrument but none are relevant.

(3) S.S.I. 2009/446. Regulation 38(10) was amended by S.S.I. 2010/5.

St Andrew's House,  
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Authorised to sign by the Scottish Ministers