
SCOTTISH STATUTORY INSTRUMENTS

2013 No. 84

FOOD

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

Made - - - - 27th February 2013
Laid before the Scottish Parliament - - - - 28th February 2013
Coming into force - - 6th April 2013

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 27(2) and (5), 30(9), 31(1), (2)(c), (d), (e), (g) and (h), 48(1) and 49(2) of the Food Safety Act 1990(1), section 2(2) of the European Communities Act 1972(2) and all other powers enabling them to do so.

In accordance with section 48(4A) of the Food Safety Act 1990, they have had regard to relevant advice given by the Food Standards Agency(3).

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(4).

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- (1) 1990 c.16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Sections 27(2), 30(9), 31(1), 48(1) and 49(2) were amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c.28). By virtue of section 40(2) of the 1999 Act, amendments made by Schedule 5 to that Act are to be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46). The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not transferred, and in so far 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).
- (2) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998, section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) 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), in so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not transferred, and in so far 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.
- (3) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.
- (4) OJ L 31, 1.2.2002, p.1. That Regulation was last amended by Commission 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 (OJ L 188, 18.7.2009, p.14).

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(5); 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⁽⁶⁾; and
- (b) paragraphs (10) and (11) of regulation 38 (analysis etc. of samples) of the Official Feed and Food Controls (Scotland) Regulations 2009⁽⁷⁾.

Revocations

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

St Andrew's House, Edinburgh
27th February 2013

MICHAEL MATHESON
Authorised to sign by the Scottish Ministers

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

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

SCHEDULE 1

Regulation 3

Instruments to which the sampling provisions of these Regulations do not apply

| <i>Title</i> | <i>Reference</i> | <i>Specified provisions</i> |
|--|---------------------------------|-----------------------------|
| The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 | S.I. 1997/1729 | Regulations 7, 8, 9 and 10 |
| The Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007 | S.S.I. 2007/483 | Regulations 7, 8 and 9 |
| The Contaminants in Food (Scotland) Regulations 2010 (to the extent that a sample falls to be prepared and analysed in accordance with Commission Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs ⁽⁸⁾) | S.S.I. 2010/329 | Regulations 7, 8 and 9 |
| The Poultrymeat (Scotland) Regulations 2011 | S.S.I. 2011/318 | Regulations 7, 8 and 9 |
| The Materials and Articles in Contact with Food (Scotland) Regulations 2012 | S.S.I. 2012/318 | Regulations 7, 8 and 9 |

SCHEDULE 2

Regulation 5

Qualifications of food examiners

PART 1

1. A first degree (with honours) in microbiology (irrespective of the title of the degree).
2. A degree of master of science, provided that—
 - (a) the degree was awarded following an examination rather than a thesis; and
 - (b) at least one paper in the degree was in microbiology.
3. Fellowship of the Institute of Biomedical Sciences if that fellowship has been gained after passing the higher specialist diploma examination in medical microbiology set by that Institute.
4. The degree in mastership in chemical analysis awarded by the Royal Society of Chemistry.
5. Fellowship or membership of the Institute of Food Science and Technology.
6. The graduateship of the Society of Biology gained after passing the examinations in the Society's theory paper in microbiology.
7. In paragraphs 1 and 2 of this Part, "degree" means a degree awarded by a body recognised for the purposes of section 214 of the Education Reform Act 1988 (which relates to bodies empowered to award degrees in the United Kingdom) or by a university in another Member State.

(8) OJ L 364, 20.12.2006, p.5. This Regulation was last amended by Commission Regulation (EU) No. 1058/2012 amending Regulation (EC) No. 1881/2006 as regards maximum levels for aflatoxins in dried figs (OJ L 313, 13.11.2012, p.14).

PART 2

1. The laboratory of the Government Chemist.
2. A laboratory owned by a government department or a laboratory under the equivalent control of the government of another Member State.
3. A laboratory appointed as an official control laboratory under 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⁽⁹⁾.
4. A laboratory of a university in the United Kingdom or of another Member State.
5. A laboratory of a fundable body within the meaning of the Further and Higher Education (Scotland) Act 2005.
6. A laboratory of the Scottish Agricultural College.
7. A laboratory specialising in food microbiology and accredited to ISO/IEC 17025⁽¹⁰⁾.

⁽⁹⁾ OJ L 165, 30.4.2004, p.1. The revised text of the Regulation is set out in a Corrigendum (OJ L 191, 28.5.2004, p.1). The Regulation was last amended by Commission Regulation (EU) No. 563/2012 (OJ L 168, 28.6.2012, p.24).

⁽¹⁰⁾ European Standard EN ISO/IEC 17025 on 'General requirements for the competence of testing and calibration laboratories'.

SCHEDULE 3

Regulation 10(2)

Certificate of Analysis or Examination

Certificate of Analysis or Examination carried out under the Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013

To: *(name and address of person who originally submitted the sample)*

I, the undersigned

public analyst*/food analyst*/food examiner* for.....

certify that at.....(time) on.....(date)

the sample marked as follows:

Date sample taken:.....

Reference number, description etc:.....

Weight or measure: *(may be omitted if the sample could not be conveniently weighed or measured or if the weight or measurement is not material to the result)*

was received by me from—

the person named above*

OR

(insert the name and address of the analyst/examiner to whom the sample was first submitted)

I certify that the sample was analysed*/examined* by me or under my direction and the results are as follows:

(if necessary continue overleaf)

My opinion and observations are *(if deemed appropriate by analyst/examiner):*

(if necessary continue overleaf)

I further certify that the sample had undergone no change that would affect my results, opinion or observations. *(This statement is required if the sample has been analysed. It should be adapted if the certificate relates to food examination)*

Certified by me this day*(insert date)* at..... *(insert place)*

Signature:..... Status.....

Name in BLOCK LETTERS

Official address:.....

Telephone No:..... Email:.....

*(*delete as appropriate)*

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

SCHEDULE 4

Regulation 12

Revocations

| <i>Title</i> | <i>Reference</i> | <i>Extent of revocation</i> |
|--|---------------------------------|-----------------------------|
| The Food Safety (Sampling and Qualifications) Regulations 1990 | S.I. 1990/2463 | The whole Regulations |
| The Animals and Animal Products (Examination for Residues and Maximum Residue Limits) Regulations 1997 | S.I. 1997/1729 | Regulation 35(1) |
| The Contaminants in Food (Scotland) Regulations 2010 | S.S.I. 2010/329 | Regulation 6 |
| The Poultrymeat (Scotland) Regulations 2011 | S.S.I. 2011/318 | Regulation 22 |
| The Materials and Articles in Contact with Food (Scotland) Regulations 2012 | S.S.I. 2012/318 | Regulation 28 |

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, in Scotland, revoke (at regulation 12 and Schedule 4) and remake with amendments provisions of the Food Safety (Sampling and Qualifications) Regulations 1990 ([S.I. 1990/2463](#)).

These Regulations—

- (a) specify the qualifications necessary to be a public analyst or food analyst (regulation 4) or food examiner (regulation 5 and Schedule 2) for the purposes of the Food Safety Act 1990;
- (b) prohibit specified persons from carrying out analyses or examinations (regulation 6);
- (c) specify the procedures to be followed when a sample has been procured under that Act for analysis or examination (regulations 7, 8 and 9), and exclude from these procedures samples taken under Regulations which have their own procedures (regulation 3 and Schedule 1); and
- (d) prescribe the form of certificate to be used by analysts and examiners in making their reports (regulation 10 and Schedule 3).

The Regulations also make consequential amendments to other Regulations (regulation 11).

A Business and Regulatory Impact Assessment has 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.