

2004 No. 3279

FOOD

The General Food Regulations 2004

Made - - - - *9th December 2004*

Laid before Parliament *10th December 2004*

Coming into force - - *1st January 2005*

The Secretary of State, in exercise of the powers conferred by sections 16(1), 17(2), 26(1) and (3) and 48(1) of the Food Safety Act 1990(a) and now vested in him(b), having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency and, being a Minister designated(c) for the purposes of section 2(2) of the European Communities Act 1972(d) in relation to measures relating to food (including drink) including the primary production of food, in exercise (as respects regulations 8 to 16 of the following Regulations) of the powers conferred by the said section 2(2), after consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council(e) 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, makes the following Regulations:

Title, extent and commencement

1. These Regulations may be cited as the General Food Regulations 2004; they extend to Great Britain and come into force on 1st January 2005.

Interpretation

2.—(1) In these Regulations —

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- (a) 1990 c.16; section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c. 40), Schedule 6 to the Food Standards Act 1999 (1999 c. 28) and S.I. 2004/2990.
- (b) Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the Food Standards Act 1999 (1999 c.28) and paragraphs 12 and 21 of that Schedule amend respectively sections 17(2) and 48 of the 1990 Act. Section 48 was also amended by S.I. 2004/2990. Functions of “the Ministers” so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the 1999 Act and those functions so far as exercisable in relation to Scotland were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c.46) as read with section 40(2) of the 1999 Act. As regards functions transferred to the Scottish Ministers by the Scotland Act 1998 (1998 c. 46), these Regulations extend to Scotland pursuant to section 57(1) of that Act; and as regards functions transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), these Regulations apply in relation to Wales pursuant to paragraph 5 in Part II of Schedule 3 to the Government of Wales Act 1998 (c. 38).
- (c) S.I. 2003/2901.
- (d) 1972 c. 68.
- (e) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4).

“the Act” means the Food Safety Act 1990;

“the Agency” means the Food Standards Agency;

“port health authority” means —

- (a) in relation to the London port health district (within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984^(a) by section 7(1) of that Act), the Common Council of the City of London; and
- (b) in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984, a port health authority for that district constituted by order under section 2(4) of that Act;

“Regulation (EC) No. 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.

(2) Expressions used both in these Regulations and in Regulation (EC) No. 178/2002 have the same meaning in these Regulations as they have in that Regulation.

Competent authorities for the purposes of Regulation (EC) No. 178/2002

3.—(1) The following bodies are designated as the competent authorities for the purposes of the provisions of Regulation (EC) No. 178/2002 specified in paragraph (2) —

- (a) the Agency,
- (b) each port health authority in its district, and
- (c) outside such districts, each food authority in its area.

(2) Those provisions of Regulation (EC) No. 178/2002 are —

- (a) Article 14(8) (power of competent authorities to take appropriate measures to impose restrictions on the placing of food on the market or to require its withdrawal from the market in certain circumstances);
- (b) Article 18(2) and (3) (competent authorities to whom food business operators must make information available on demand as to the traceability of food);
- (c) Article 19 (food business operators to inform and collaborate with competent authorities to avoid or reduce risks posed by a food).

Requirements under Regulation (EC) No. 178/2002 : offences

4. Any person who contravenes or fails to comply with any of the following provisions of Regulation (EC) No. 178/2002 shall be guilty of an offence —

- (a) Article 14(1) (food safety requirements);
- (b) Article 16 (presentation) in so far as it relates to food;
- (c) Article 18(2) or (3) (traceability) in so far as it relates to food business operators;
- (d) Article 19 (responsibilities for food : food business operators).

Punishment of offences

5.—(1) A person guilty of an offence under regulation 4 shall be liable —

- (a) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both;
- (b) on summary conviction, to a fine not exceeding the relevant amount or to imprisonment for a term not exceeding six months or to both.

(a) 1984 c. 22.

- (2) In paragraph (1) “the relevant amount” means —
- (a) in the case of an offence under regulation 4(a), £20,000;
 - (b) in any other case, the statutory maximum.

Enforcement

6.—(1) Subject to paragraph (2), each food authority shall enforce and execute the following provisions of Regulation (EC) No. 178/2002 and these Regulations in its area —

- (a) Article 14;
- (b) Article 16 in so far as it relates to food;
- (c) Article 18 in so far as it relates to food business operators; and
- (d) Article 19.

(2) Each port health authority shall enforce and execute those provisions of Regulation (EC) No. 178/2002 and these Regulations in its district.

(3) The Agency shall also enforce and execute Articles 14 and 19 of Regulation (EC) No. 178/2002 and these Regulations in so far as they relate to those Articles as regards relevant food.

(4) In paragraph (3) “relevant food” means food in respect of which the Agency is specified in regulations made pursuant to section 6(4) of the Act or made under the European Communities Act 1972 as being the enforcement authority.

Application of various provisions of the Act

7.—(1) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof shall be construed as a reference to these Regulations —

- (a) section 20 (offences due to fault of another person);
- (b) section 21 (defence of due diligence) with the modifications that subsections (2) to (4) shall apply in relation to an offence under regulation 4(a) or (b) as they apply in relation to an offence under section 14 or 15, and in subsection (4) the references to “sale” shall be deemed to include references to “placing on the market”;
- (c) section 22 (defence of publication in the course of a business) with the modification that the words “for sale” shall be omitted;
- (d) section 30(8) (which relates to documentary evidence);
- (e) section 35(1) (punishment of offences)(a) in so far as it relates to offences under section 33(1) as applied by paragraph (3) below;
- (f) section 35(2) and (3) in so far as it relates to offences under section 33(2) as applied by paragraph (3) below;
- (g) section 36 (offences by bodies corporate);
- (h) section 36A (offences by Scottish partnerships)(b).

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the references in subsection (1) to the Act shall be construed as including references to Regulation (EC) No. 178/2002.

(3) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act shall be construed as including a reference to Regulation (EC) No. 178/2002 and these Regulations —

(a) Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c. 44), Schedule 26, paragraph 42, from a date to be appointed.

(b) Section 36A was inserted by the Food Standards Act 1999 (1999 c. 28), Schedule 5, paragraph 16.

- (a) section 3 (presumptions that food is intended for human consumption) with the modifications that the references to “sold” and “sale” shall be deemed to include references to “placed on the market” and “placing on the market” respectively;
- (b) section 33(1) (obstruction etc. of officers);
- (c) 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 that subsection as applied by sub-paragraph (b) above;
- (d) section 44 (protection of officers acting in good faith).

(4) Section 34 of the Act (time limit for prosecutions) shall apply to offences under regulation 4 as it applies to offences punishable under section 35(2) of the Act.

Amendment of the Act

8. The Act shall be amended in accordance with regulations 9 to 15.

9. In section 7 (rendering food injurious to health) —

(a) there shall be substituted for subsection (2) the following subsection —

“(2) In determining for the purposes of this section whether any food is injurious to health, regard shall be had to the matters specified in sub-paragraphs (a) to (c) of Article 14(4) of Regulation (EC) No. 178/2002.”;

(b) subsection (3) shall be omitted.

10. In section 8 (selling food not complying with food safety requirements) —

(a) subsection (1) shall be omitted;

(b) for subsections (2) and (3) there shall be substituted —

“(2) For the purposes of this Part food fails to comply with food safety requirements if it is unsafe within the meaning of Article 14 of Regulation (EC) No. 178/2002 and references to food safety requirements or to food complying with such requirements shall be construed accordingly.”.

11. In section 9 (inspection and seizure of suspected food) —

(a) in subsection (1) —

(i) after paragraph (a) the word “or” shall be omitted; and

(ii) after paragraph (b) the following paragraph shall be inserted —

“or

(c) is otherwise placed on the market within the meaning of Regulation (EC) No. 178/2002.”;

(b) in subsection (5) there shall be substituted for the words “or 8 above” the words “or regulation 4(a) of the General Food Regulations 2004”.

12. In section 11 there shall be inserted after subsection (2) —

“(2A) In subsection (2) above and in sections 12(4) and 13(1) “injury” includes any impairment, whether permanent or temporary.”.

13. In section 21(2) (defence of due diligence) there shall be substituted for the words “section 8, 14 or 15” the words “section 14 or 15”.

14. In section 35(3)(a) (punishment of offences) there shall be substituted for the words “section 7, 8 or 14” the words “section 7 or 14”.

15. In section 53(2) (interpretation) —

(a) there shall be substituted for the entry for “food safety requirements and related expressions” the following entry —

“food safety requirements section 8”;

(b) the entry for “injury to health and injurious to health” shall be omitted.

Consequential amendment of Regulations

16.—(1) This regulation applies to any provision of any Regulations by virtue of which immediately before the coming into force of these Regulations section 8(3) of the Act applies where any requirements of those Regulations or any requirements referred to in those Regulations are contravened in respect of any food.

(2) Any provision to which paragraph (1) applies shall be construed as providing that where any requirements of those Regulations or any requirements referred to in those Regulations are contravened in respect of any food and that food is part of a batch, lot or consignment of food of the same class or description, it shall be presumed, until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

Signed by authority of the Secretary of State for Health

Melanie Johnson
Parliamentary Under Secretary of State,
Department of Health

9th December 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations provide for the enforcement of certain provisions of Regulation (EC) No. 178/2002 of the European Parliament and of the Council (OJ No. L31, 1.2.2002, p.1) 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.

2. The provisions concerned are as follows —

- (a) Article 14 which prohibits the placing of unsafe food on the market;
- (b) Article 16 in so far as it prohibits labelling, advertising or presentation of food from misleading consumers;
- (c) Article 18 on traceability in so far as it imposes obligations on food business operators;
- (d) Article 19 which imposes obligations on food business operators to act where food is not in compliance with food safety requirements.

In the EC Regulation, “food”, “food business operator” and associated expressions are defined in Articles 2 and 3.

3. These Regulations —

- (a) designate food authorities, port health authorities and the Food Standards Agency as the competent authorities for the purposes of certain provisions of those Articles of the EC Regulation (regulation 3) and also make provision as to enforcement authorities (regulation 6);
- (b) make provision for offences (regulation 4) and penalties (regulation 5);
- (c) apply certain provisions of the Food Safety Act 1990 (regulation 7);
- (d) make some consequential amendments to the Food Safety Act 1990 (regulations 8 to 15) and to regulations referring to section 8(3) of that Act (regulation 16).

4. A full regulatory impact assessment of the effect that these Regulations will have on the costs of business has been prepared and placed in the Library of each House of Parliament. Copies may be obtained from the Food Law Policy Branch of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.

STATUTORY INSTRUMENTS

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