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STATUTORY INSTRUMENTS

# 2006 No. 14

# FOOD, ENGLAND

## The Food Hygiene (England) Regulations 2006

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| *Made - - - -* | *9th January 2006* |
| *Laid before Parliament* | *9th January 2006* |
| *Coming into force - -* | *11th January 2006* |

The Secretary of State makes the following Regulations in exercise of the powers conferred on her by section 2(2) of the European Communities Act 1972(**1**).

The Secretary of State has been designated(**2**) for the purposes of that section in relation to measures relating to food (including drink) including the primary production of food.

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(**3**) as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council amending Regulation (EC) No. 178/2002 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**) there has been open and transparent public consultation during the preparation of the following Regulations.

## PART 1

## PRELIMINARY

### Title, commencement and application

**1.** These Regulations —

(a) may be cited as the Food Hygiene (England) Regulations 2006;

(b) come into force on 11th January 2006; and

(c) apply in relation to England only.

### Interpretation

**2.**—(1) In these Regulations —

(**1**) 1972 c. 68.
(**2**) S.I. 2003/2901.
(**3**) OJ No. L31, 1.2.2002, p.1.
(**4**) OJ No. L245, 29.9.2003, p.4.

"the Act" means the Food Safety Act 1990(**5**);

"the Agency" means the Food Standards Agency;

"authorised officer", in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under the Hygiene Regulations;

"the Community Regulations" means Regulation 852/2004, Regulation 853/2004, Regulation 854/2004, Regulation 2073/2005 and Regulation 2075/2005;

"Directive 2004/41", "Regulation 178/2002", "Regulation 1642/2003", "Regulation 852/2004", "Regulation 853/2004", "Regulation 854/2004", "Regulation 882/2004", "Regulation 1688/2005", "Regulation 2073/2005", "Regulation 2074/2005", "Regulation 2075/2005" and "Regulation 2076/2005" have the meanings respectively given to them in Schedule 1;

"enforcement authority" means the authority which, by virtue of regulation 5, is responsible for executing and enforcing the Hygiene Regulations;

"food authority" has the meaning that it bears by virtue of section 5(1) of the Act, except that it does not include the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and Middle Temple);

"the Hygiene Regulations" means these Regulations and the Community Regulations;

"premises" includes any establishment, any place, vehicle, stall or moveable structure and any ship or aircraft; and

"specified Community provision" means any provision of the Community Regulations that is specified in Column 1 of Schedule 2 and whose subject-matter is described in Column 2 of that Schedule.

(2) Subject to paragraph (3), any expression other than one defined in paragraph (1) that is used both in these Regulations and in the Act has the meaning it bears in the Act.

(3) Unless the context otherwise requires, any expression used both in these Regulations and in Regulation 178/2002 or the Community Regulations has the meaning that it bears in Regulation 178/2002 or the Community Regulations, as the case may be.

(4) Where any functions under the Act are assigned—

(a) by an order under section 2 or 7 of the Public Health (Control of Disease) Act 1984(**6**), to a port health authority;

(b) by an order under section 6 of the Public Health Act 1936(**7**), to a joint board for a united district; or

(c) by an order under paragraph 15(6) of Schedule 8 to the Local Government Act 1985(**8**), to a single authority for a metropolitan county,

any reference in these Regulations to a food authority shall be construed, so far as relating to those functions, as a reference to the authority to whom they are so assigned.

(5) Where, apart from this paragraph, any period of less than seven days which is specified in these Regulations would include any day which is —

(a) a Saturday, a Sunday, Christmas Day or Good Friday; or

(b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**9**),

(**5**) 1990 c. 16.
(**6**) 1984 c. 22; section 7(3)(d) was substituted by paragraph 27 of Schedule 3 to the Food Safety Act 1990 (1990 c. 16).
(**7**) 1936 c. 49; section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.
(**8**) 1985 c. 51; paragraph 15(6) was amended by paragraph 31(b) of Schedule 3 to the Food Safety Act 1990.
(**9**) 1971 c. 80.

that day shall be excluded from the period.

**Presumptions that food is intended for human consumption**

**3.**—(1) The following paragraphs shall apply for the purposes of these Regulations.

(2) Any food commonly used for human consumption shall, if placed on the market or offered, exposed or kept for placing on the market, be presumed, until the contrary is proved, to have been placed on the market or, as the case may be, to have been or to be intended for placing on the market for human consumption.

(3) The following, namely —

(a) any food commonly used for human consumption which is found on premises used for the preparation, storage, or placing on the market of that food; and

(b) any article or substance commonly used in the manufacture of food for human consumption which is found on premises used for the preparation, storage or placing on the market of that food,

shall be presumed, until the contrary is proved, to be intended for placing on the market, or for manufacturing food for placing on the market, for human consumption.

(4) Any article or substance capable of being used in the composition or preparation of any food commonly used for human consumption which is found on premises on which that food is prepared shall, until the contrary is proved, be presumed to be intended for such use.

**Competent authority**

**4.** The competent authority for the purposes of the Community Regulations shall be the Agency except where it has delegated competences as provided for in those Regulations.

**Enforcement**

**5.**—(1) In respect of any food business operator to whose operations Regulation 852/2004 applies but Regulation 853/2004 does not apply —

(a) the Agency or the food authority in whose area the food business operator carries out his operations shall execute and enforce the Hygiene Regulations in so far as the operator concerned is carrying out primary production and those associated operations listed in paragraph 1 of Part AI of Annex I to Regulation 852/2004 other than the associated operations described in sub–paragraphs (a) and (c) of that paragraph to the extent that they concern wild game; and

(b) the food authority in whose area the food business operator carries out his operations shall execute and enforce the Hygiene Regulations in so far as the operator concerned is carrying out operations which are not executed and enforced by the Agency or the food authority as provided for in sub–paragraph (a).

(2) In respect of any food business operator to whose operations both Regulation 852/2004 and Regulation 853/2004 apply —

(a) the Agency shall execute and enforce the Hygiene Regulations in so far as the operator concerned is carrying out operations in relation to —

(i) a slaughterhouse,

(ii) a game-handling establishment, or

(iii) a cutting plant; and

(b) the Agency or the food authority in whose area the food business operator carries out his operations shall execute and enforce the Hygiene Regulations in so far as the operator

concerned is carrying out operations in relation to any establishment that is not specified in sub–paragraph (a).

(3) In respect of —

(a) collection centres and tanneries supplying raw material for the production of gelatine intended for human consumption pursuant to paragraph 5 of Chapter I of Section XIV of Annex III to Regulation 853/2004; and

(b) collection centres and tanneries supplying raw material for the production of collagen intended for human consumption pursuant to paragraph 5 of Chapter I of Section XV of Annex III to Regulation 853/2004,

the food authority in whose area the collection centre or tannery concerned is situated shall execute and enforce the Hygiene Regulations.

(4) Each food authority shall execute and enforce these Regulations in its area in relation to the matters regulated by —

(a) Schedules 3 to 5; and

(b) Schedule 6 in so far as it applies in relation to raw milk intended for direct human consumption other than raw cows' milk.

(5) The Agency shall execute and enforce these Regulations in relation to the matters regulated by Schedule 6 in so far as it applies in relation to raw cows' milk intended for direct human consumption.

(6) In this regulation —

"cutting plant" means an establishment which is used for boning and/or cutting up fresh meat for placing on the market and which —

(a) is approved or conditionally approved under Article 31(2) of Regulation 882/2004; or

(b) (although lacking the approval or conditional approval that it requires under Article 4(3) of Regulation 853/2004) was, on 31st December 2005, operating as licensed cutting premises under the Fresh Meat (Hygiene and Inspection) Regulations 1995(**10**) or the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995(**11**);

"game-handling establishment" means any establishment in which game and game meat obtained after hunting are prepared for placing on the market and which —

(a) is approved or conditionally approved under Article 31(2) of Regulation 882/2004; or

(b) (although lacking the approval or conditional approval that it requires under Article 4(3) of Regulation 853/2004) was, on 31st December 2005, operating as a licensed wild game processing facility under the Wild Game Meat (Hygiene and Inspection) Regulations 1995(**12**); and

"slaughterhouse" means an establishment used for slaughtering and dressing animals, the meat of which is intended for human consumption and which —

(a) is approved or conditionally approved under Article 31(2) of Regulation 882/2004; or

(b) (although lacking the approval or conditional approval that it requires under Article 4(3) of Regulation 853/2004) was, on 31st December 2005, operating as a licensed slaughterhouse under the Fresh Meat (Hygiene and Inspection) Regulations 1995 or the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995.

(**10**) S.I. 1995/539, revoked by S.I. 2005/2059.
(**11**) S.I. 1995/540, revoked by S.I. 2005/2059.
(**12**) S.I. 1995/2148, revoked by S.I. 2005/2059.

# PART 2

## MAIN PROVISIONS

### Hygiene improvement notices

**6.**—(1) If an authorised officer of an enforcement authority has reasonable grounds for believing that a food business operator is failing to comply with the Hygiene Regulations, he may by a notice served on that person (in these Regulations referred to as a "hygiene improvement notice") —

(a) state the officer's grounds for believing that the food business operator is failing to comply with the Hygiene Regulations;

(b) specify the matters which constitute the food business operator's failure to comply;

(c) specify the measures which, in the officer's opinion, the food business operator must take in order to secure compliance; and

(d) require the food business operator to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.

(2) Any person who fails to comply with a hygiene improvement notice shall be guilty of an offence.

### Hygiene prohibition orders

**7.**—(1) If —

(a) a food business operator is convicted of an offence under these Regulations; and

(b) the court by or before which he is so convicted is satisfied that the health risk condition is fulfilled with respect to the food business concerned,

the court shall by an order impose the appropriate prohibition.

(2) The health risk condition is fulfilled with respect to any food business if any of the following involves risk of injury to health (including any impairment, whether permanent or temporary), namely —

(a) the use for the purposes of the business of any process or treatment;

(b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; and

(c) the state or condition of any premises or equipment used for the purposes of the business.

(3) The appropriate prohibition is —

(a) in a case falling within sub–paragraph (a) of paragraph (2), a prohibition on the use of the process or treatment for the purposes of the business;

(b) in a case falling within sub–paragraph (b) of that paragraph, a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description; and

(c) in a case falling within sub–paragraph (c) of that paragraph, a prohibition on the use of the premises or equipment for the purposes of any food business.

(4) If —

(a) a food business operator is convicted of an offence under these Regulations; and

(b) the court by or before which he is so convicted thinks it proper to do so in all the circumstances of the case,

the court may, by an order, impose a prohibition on the food business operator participating in the management of any food business, or any food business of a class or description specified in the order.

(5) As soon as practicable after the making of an order under paragraph (1) or (4) (in these Regulations referred to as a "hygiene prohibition order"), the enforcement authority shall —

(a) serve a copy of the order on the relevant food business operator; and

(b) in the case of an order made under paragraph (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as they consider appropriate,

and any person who knowingly contravenes such an order shall be guilty of an offence.

(6) A hygiene prohibition order shall cease to have effect —

(a) in the case of an order made under paragraph (1), on the issue by the enforcement authority of a certificate to the effect that they are satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business; and

(b) in the case of an order made under paragraph (4), on the giving by the court of a direction to that effect.

(7) The enforcement authority shall issue a certificate under sub–paragraph (a) of paragraph (6) within three days of their being satisfied as mentioned in that sub–paragraph; and on an application by the food business operator for such a certificate, the authority shall —

(a) determine, as soon as is reasonably practicable and in any event within 14 days, whether or not they are so satisfied; and

(b) if they determine that they are not so satisfied, give notice to the food business operator of the reasons for that determination.

(8) The court shall give a direction under sub–paragraph (b) of paragraph (6) if, on an application by the food business operator, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the food business operator since the making of the order; but no such application shall be entertained if it is made —

(a) within six months of the making of the hygiene prohibition order; or

(b) within three months of the making by the food business operator of a previous application for such a direction.

(9) Where a magistrates' court makes an order under paragraph (2) of regulation 8 with respect to any food business, paragraph (1) shall apply as if the food business operator had been convicted by the court of an offence under these Regulations.

(10) Where the commission of an offence by a food business operator leads to the conviction of another person pursuant to regulation 10, paragraph (4) shall apply in relation to that other person as it applies in relation to the food business operator and any reference in paragraph (5) or (8) to the food business operator shall be construed accordingly.

### Hygiene emergency prohibition notices and orders

**8.**—(1) If an authorised officer of an enforcement authority is satisfied that the health risk condition is fulfilled with respect to any food business he may by a notice served on the relevant food business operator (in these Regulations referred to as a "hygiene emergency prohibition notice") impose the appropriate prohibition.

(2) If a magistrates' court is satisfied, on the application of such an officer, that the health risk condition is fulfilled with respect to any food business, the court shall, by an order (in

these Regulations referred to as a "hygiene emergency prohibition order"), impose the appropriate prohibition.

(3) Such an officer shall not apply for a hygiene emergency prohibition order unless, at least one day before the date of the application, he has served notice on the relevant food business operator of his intention to apply for the order.

(4) Paragraphs (2) and (3) of regulation 7 shall apply for the purposes of this regulation as they apply for the purposes of that regulation, but as if the reference in paragraph (2) to risk of injury to health were a reference to imminent risk of injury.

(5) As soon as practicable after the service of a hygiene emergency prohibition notice, an authorised officer of an enforcement authority shall affix a copy of the notice in a conspicuous position on such premises used for the purposes of the food business as he considers appropriate; and any person who knowingly contravenes such a notice shall be guilty of an offence.

(6) As soon as practicable after the making of a hygiene emergency prohibition order, an authorised officer of an enforcement authority shall —

(a) serve a copy of the order on the relevant food business operator; and

(b) affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as he considers appropriate,

and any person who knowingly contravenes such an order shall be guilty of an offence.

(7) A hygiene emergency prohibition notice shall cease to have effect —

(a) if no application for a hygiene emergency prohibition order is made within the period of three days beginning with the service of the notice, at the end of that period; or

(b) if such an application is so made, on the determination or abandonment of the application.

(8) A hygiene emergency prohibition notice or a hygiene emergency prohibition order shall cease to have effect on the issue by the enforcement authority of a certificate to the effect that they are satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business.

(9) The enforcement authority shall issue a certificate under paragraph (8) within three days of their being satisfied as mentioned in that paragraph; and on an application by the food business operator for such a certificate, the authority shall —

(a) determine as soon as is reasonably practicable and in any event within 14 days whether or not they are so satisfied; and

(b) if they determine that they are not so satisfied, give notice to the food business operator of the reasons for that determination.

(10) Where a hygiene emergency prohibition notice is served on a food business operator, the enforcement authority shall compensate him in respect of any loss suffered by reason of his complying with the notice unless —

(a) an application for a hygiene emergency prohibition order is made within the period of three days beginning with the service of the notice; and

(b) the court declares itself satisfied, on the hearing of the application, that the health risk condition was fulfilled with respect to the food business at the time when the notice was served,

and any disputed question as to the right to or the amount of any compensation payable under this paragraph shall be determined by arbitration.

### Remedial action notices and detention notices

**9.**—(1) Where it appears to an authorised officer of an enforcement authority that in respect of an establishment subject to approval under Article 4(2) of Regulation 853/2004 —

(a) any of the requirements of the Hygiene Regulations is being breached; or

(b) inspection under the Hygiene Regulations is being hampered,

he may, by a notice in writing (in these Regulations referred to as a "remedial action notice") served on the relevant food business operator or his duly authorised representative —

(c) prohibit the use of any equipment or any part of the establishment specified in the notice;

(d) impose conditions upon or prohibit the carrying out of any process; or

(e) require the rate of operation to be reduced to such extent as is specified in the notice, or to be stopped completely.

(2) A remedial action notice shall be served as soon as practicable and shall state why it is being served.

(3) If it is served under paragraph (1)(a), it shall specify the breach and the action needed to remedy it.

(4) An authorised officer of the enforcement authority whose authorised officer served the original remedial action notice shall, as soon as he is satisfied that such action has been taken, withdraw the notice by a further notice in writing served on the food business operator or his duly authorised representative.

(5) An authorised officer of an enforcement authority may, at an establishment subject to approval under Article 4(2) of Regulation 853/2004, by a notice in writing (in this regulation referred to as a "detention notice") served on the relevant food business operator or his duly authorised representative require the detention of any animal or food for the purpose of examination (including the taking of samples).

(6) An authorised officer of the enforcement authority whose officer served the original detention notice shall, as soon as he is satisfied that the animal or food need no longer be detained, withdraw the notice by a further notice in writing served on the food business operator or his duly authorised representative.

(7) Any person who fails to comply with a remedial action notice or a detention notice shall be guilty of an offence.

### Offences due to fault of another person

**10.** Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first–mentioned person.

### Defence of due diligence

**11.**—(1) In any proceedings for an offence under these Regulations, it shall, subject to paragraph (2), be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the accused shall not, without leave of the court, be entitled to rely on that defence unless —

(a) at least seven clear days before the hearing; and

(b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,

he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

# PART 3

## ADMINISTRATION AND ENFORCEMENT

### Procurement of samples

**12.** An authorised officer of an enforcement authority may —

(a) purchase a sample of any food, or any substance capable of being used in the preparation of food;

(b) take a sample of any food, or any such substance, which —

(i) appears to him to be intended for placing on the market or to have been placed on the market, for human consumption, or

(ii) is found by him on or in any premises which he is authorised to enter by or under regulation 14;

(c) take a sample from any food source, or a sample of any contact material, which is found by him on or in any such premises; and

(d) take a sample of any article or substance which is found by him on or in any such premises and which he has reason to believe may be required as evidence in proceedings under any of the provisions of these Regulations.

### Analysis etc. of samples

**13.**—(1) An authorised officer of an enforcement authority who has procured a sample under regulation 12 shall —

(a) if he considers that the sample should be analysed, submit it to be analysed —

(i) by the public analyst for the area in which the sample was procured, or

(ii) by the public analyst for the area which consists of or includes the area of the authority; and

(b) if he considers that the sample should be examined, submit it to be examined by a food examiner.

(2) A person, other than such an officer, who has purchased any food, or any substance capable of being used in the preparation of food, may submit a sample of it —

(a) to be analysed by the public analyst for the area in which the purchase was made; or

(b) to be examined by a food examiner.

(3) If, in any case where a sample is proposed to be submitted for analysis under this regulation, the office of public analyst for the area in question is vacant, the sample shall be submitted to the public analyst for some other area.

(4) If, in any case where a sample is proposed to be or is submitted for analysis or examination under this regulation, the food analyst or examiner determines that he is for any reason unable to

perform the analysis or examination, the sample shall be submitted or, as the case may be, sent by him to such other food analyst or examiner as he may determine.

(5) A food analyst or examiner shall analyse or examine as soon as practicable any sample submitted or sent to him under this regulation, but may, except where —

(a) he is the public analyst for the area in question; and

(b) the sample is submitted to him for analysis by an authorised officer of an enforcement authority,

demand in advance the payment of such reasonable fee as he may require.

(6) Any food analyst or examiner who has analysed or examined a sample shall give to the person by whom it was submitted a certificate specifying the result of the analysis or examination.

(7) Any certificate given by a food analyst or examiner under paragraph (6) shall be signed by him, but the analysis or examination may be made by any person acting under his direction.

(8) In any proceedings under these Regulations, the production by one of the parties —

(a) of a document purporting to be a certificate given by a food analyst or examiner under paragraph (6); or

(b) of a document supplied to him by the other party as being a copy of such a certificate,

shall be sufficient evidence of the facts stated in it unless, in a case falling within sub–paragraph (a), the other party requires that the food analyst or examiner shall be called as a witness.

(9) Where two or more public analysts are appointed for any area, any reference in this regulation to the public analyst for that area shall be construed as a reference to either or any of them.

(10) The Food Safety (Sampling and Qualifications) Regulations 1990(**13**) shall apply in relation to a sample procured by an authorised officer of a food authority under regulation 12 as if it were a sample procured by an authorised officer under section 29 of the Act.

(11) The certificate given by a food analyst or examiner under paragraph (6) shall be in the form set out in Schedule 3 to the Food Safety (Sampling and Qualifications) Regulations 1990.

**Powers of entry**

**14.**—(1) An authorised officer of a food authority shall, on producing, if so required, some duly authenticated document showing his authority, have a right at all reasonable hours —

(a) to enter any premises within the authority's area for the purpose of ascertaining whether there is or has been on the premises any contravention of the provisions of the Hygiene Regulations;

(b) to enter any premises, whether within or outside the authority's area, for the purpose of ascertaining whether there is on the premises any evidence of any such contravention within that area; and

(c) to enter any premises for the purpose of the performance by the authority of their functions under the Hygiene Regulations,

but admission to any premises used only as a private dwelling–house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(2) An authorised officer of the Agency shall, on producing if so required some duly authenticated document showing his authority, have a right at all reasonable hours to enter any premises for the purpose of —

(a) ascertaining whether there is or has been on the premises any contravention of the provisions of the Hygiene Regulations;

(**13**) S.I. 1990/2463, to which there are amendments not relevant to these Regulations.

(b) ascertaining whether there is on the premises any evidence of any such contravention; and

(c) the performance by the Agency of its functions under the Hygiene Regulations,

but admission to any premises used only as a private dwelling–house shall not be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier.

(3) If a justice of the peace, on sworn information in writing, is satisfied that there is reasonable ground for entry onto any premises for any such purpose as is mentioned in paragraph (1) or (2) and either —

(a) that admission to the premises has been refused, or a refusal is apprehended, and that notice of the intention to apply for a warrant has been given to the occupier; or

(b) that an application for admission, or the giving of such a notice, would defeat the object of the entry, or that the case is one of urgency, or that the premises are unoccupied or the occupier is temporarily absent,

the justice may by warrant signed by him authorise the authorised officer to enter the premises, if need be by reasonable force.

(4) Every warrant granted under this regulation shall continue in force for a period of one month.

(5) An authorised officer entering any premises by virtue of this regulation, or of a warrant issued under it, may take with him such other persons as he considers necessary, and on leaving any unoccupied premises which he has entered by virtue of such a warrant shall leave them as effectively secured against unauthorised entry as he found them.

(6) An authorised officer entering premises by virtue of this regulation, or of a warrant issued under it, may inspect any records (in whatever form they are held) relating to a food business and, where any such records are stored in any electronic form —

(a) may have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records; and

(b) may require any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material to afford him such assistance as he may reasonably require.

(7) Any officer exercising any power conferred by paragraph (6) may —

(a) seize and detain any records which he has reason to believe may be required as evidence in proceedings under any of the provisions of these Regulations; and

(b) where the records are stored in any electronic form, require the records to be produced in a form in which they may be taken away.

(8) If any person who enters any premises by virtue of this regulation, or of a warrant issued under it, discloses to any person any information obtained by him on the premises with regard to any trade secret, he shall, unless the disclosure was made in the performance of his duty, be guilty of an offence.

(9) Nothing in this regulation authorises any person, except with the permission of the local authority under the Animal Health Act 1981(**14**), to enter any premises —

(a) on which an animal or bird affected with any disease to which that Act applies is kept; and

(b) which is situated in a place declared under that Act to be infected with such a disease.

### Obstruction etc. of officers

**15.**—(1) Any person who —

(**14**) 1981 c. 22.

(a) intentionally obstructs any person acting in the execution of the Hygiene Regulations; or

(b) without reasonable cause, fails to give to any person acting in the execution of the Hygiene Regulations any assistance or information which that person may reasonably require of him for the performance of his functions under the Hygiene Regulations,

shall be guilty of an offence.

(2) Any person who, in purported compliance with any such requirement as is mentioned in sub–paragraph (b) of paragraph (1) —

(a) furnishes information which he knows to be false or misleading in a material particular; or

(b) recklessly furnishes information which is false or misleading in a material particular,

shall be guilty of an offence.

(3) Nothing in sub–paragraph (b) of paragraph (1) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

### Time limit for prosecutions

**16.** No prosecution for an offence under these Regulations which is punishable under paragraph (2) of regulation 17 shall be begun after the expiry of —

(a) three years from the commission of the offence; or

(b) one year from its discovery by the prosecutor,

whichever is the earlier.

### Offences and penalties

**17.**—(1) Subject to paragraph (4), any person who contravenes or fails to comply with any of the specified Community provisions shall be guilty of an offence.

(2) Subject to paragraph (3), a person guilty of an offence under these Regulations shall be liable —

(a) on summary conviction to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment to imprisonment for a term not exceeding two years, to a fine or to both.

(3) A person guilty of an offence under regulation 15 shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

(4) A person shall be considered not to have contravened or failed to comply with Article 4(2) of Regulation 852/2004 as read with paragraph 4 of Chapter IV of Annex II to that Regulation (bulk foodstuffs in liquid, granulate or powder form to be transported in receptacles and/or containers/ tankers reserved for the transport of foodstuffs) provided the requirements of Schedule 3 are complied with.

### Offences by bodies corporate

**18.**—(1) Where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of —

(a) any director, manager, secretary or other similar officer of the body corporate; or

(b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(2) In sub–paragraph (a) of paragraph (1) "director", in relation to any body corporate established by or under any enactment for the purpose of carrying on under national ownership any industry or part of an industry or undertaking, being a body corporate whose affairs are managed by its members, means a member of that body corporate.

### Offences by Scottish partnerships

**19.** Where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he, as well as the partnership shall be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

### Right of appeal

**20.**—(1) Any person who is aggrieved by —

(a) a decision of an authorised officer of an enforcement authority to serve a hygiene improvement notice;

(b) a decision of an enforcement authority to refuse to issue a certificate under paragraph (6) of regulation 7 or paragraph (8) of regulation 8; or

(c) a decision of an authorised officer of an enforcement authority to serve a remedial action notice,

may appeal to a magistrates' court.

(2) The procedure on an appeal to a magistrates' court under paragraph (1) shall be by way of complaint for an order, and the Magistrates' Courts Act 1980(**15**) shall apply to the proceedings.

(3) The period within which an appeal under paragraph (1) may be brought shall be —

(a) one month from the date on which notice of the decision was served on the person desiring to appeal; or

(b) in the case of an appeal against a decision to issue a hygiene improvement notice, the period specified in sub–paragraph (a) or, if it is shorter, the period specified in the notice pursuant to sub–paragraph (d) of paragraph (1) of regulation 6,

and the making of a complaint for an order shall be deemed for the purposes of this paragraph to be the bringing of the appeal.

### Appeals to Crown Court

**21.** A person who is aggrieved by —

(a) the dismissal by a magistrates' court of an appeal to it under paragraph (1) of regulation 20; or

(b) any decision of such a court to make a hygiene prohibition order or a hygiene emergency prohibition order,

may appeal to the Crown Court.

(**15**) 1980 c. 43.

### Appeals against hygiene improvement notices and remedial action notices

**22.**—(1) On an appeal against a hygiene improvement notice or a remedial action notice, the court may cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such modifications as the court may in the circumstances think fit.

(2) Where any period specified in a hygiene improvement notice pursuant to sub–paragraph (d) of paragraph (1) of regulation 6 would otherwise include any day on which an appeal against that notice is pending, that day shall be excluded from that period.

(3) Any appeal shall be regarded as pending for the purposes of paragraph (2) until it is finally disposed of, is withdrawn or is struck out for want of prosecution.

### Application of section 9 of the Food Safety Act 1990

**23.** Section 9 of the Act (inspection and seizure of suspected food)(**16**) shall apply for the purposes of these Regulations with the modification that it shall apply in relation to an authorised officer of an enforcement authority as it applies in relation to an authorised officer of a food authority.

## PART 4

## MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

### Power to issue codes of recommended practice

**24.**—(1) For the guidance of food authorities, the Secretary of State may issue codes of recommended practice as regards the execution and enforcement of the Hygiene Regulations and any such code shall be laid before Parliament after being issued.

(2) The Agency may, after consulting the Secretary of State, give a food authority a direction requiring them to take any specified steps in order to comply with a code issued under this regulation.

(3) In exercise of the functions conferred on them by or under the Hygiene Regulations, every food authority —

(a) shall have regard to any relevant provision of any such code; and

(b) shall comply with any direction which is given under this regulation and requires them to take any specified steps in order to comply with such a code.

(4) Any direction under paragraph (2) shall, on the application of the Agency, be enforceable by mandatory order.

(5) The Agency shall consult the Secretary of State before making an application under paragraph (4).

(6) Before issuing any code under this regulation, the Secretary of State shall have regard to any relevant advice given by the Agency.

### Protection of officers acting in good faith

**25.**—(1) An officer of an enforcement authority is not personally liable in respect of any act done by him —

(a) in the execution or purported execution of the Hygiene Regulations; and

(b) within the scope of his employment,

(**16**) Section 9 was amended by S.I. 2004/3279 and section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990.

if he did that act in the honest belief that his duty under the Hygiene Regulations required or entitled him to do it.

(2) Nothing in paragraph (1) shall be construed as relieving any enforcement authority of any liability in respect of the acts of their officers.

(3) Where an action has been brought against an officer of an enforcement authority in respect of an act done by him —

(a) in the execution or purported execution of the Hygiene Regulations; but

(b) outside the scope of his employment,

the authority may indemnify him against the whole or a part of any damages which he has been ordered to pay or any costs which he may have incurred if they are satisfied that he honestly believed that the act complained of was within the scope of his employment.

(4) A public analyst appointed by a food authority shall be treated for the purposes of this regulation as being an officer of the authority, whether or not his appointment is a whole–time one.

**Revocation and suspension of designations and appointments**

**26.**—(1) Subject to paragraphs (2) and (3), the Agency may at any time revoke or suspend —

(a) the appointment of an official veterinarian;

(b) the designation of an approved veterinarian; or

(c) the appointment of an official auxiliary,

if it appears to the Agency that the person in question is unfit to perform any of the functions of that post under the Hygiene Regulations.

(2) Where the Agency revokes or suspends a designation or appointment under paragraph (1), the Agency shall, as soon as practicable, give to the person whose designation or appointment has been revoked or suspended a notice in writing of the reasons for the revocation or suspension and shall afford him an opportunity of —

(a) making representations in writing to the Agency with regard to the revocation or suspension; or

(b) being heard by a person nominated by the Agency for the purpose pursuant to sub–paragraph (a) of paragraph (5).

(3) A notice given under paragraph (2) shall inform the person to whom it is given —

(a) of his right to make representations in writing;

(b) of the manner in which and the time (not being less than 21 days from the giving of the notice) within which such representations may be made;

(c) of his right to be heard; and

(d) of the manner in which and the time (not being less than 21 days from the giving of the notice) within which he may apply for an opportunity to be heard.

(4) In the event of the person whose designation or appointment has been revoked or suspended making any representations (whether orally or in writing) under paragraph (3) the Agency shall reconsider whether that person is unfit to perform any of the functions of the post held by him under the Hygiene Regulations and shall, as soon as practicable, reconsider its decision to revoke or suspend the designation or appointment under paragraph (1) in the light of those representations.

(5) Where a person requests the opportunity to be heard pursuant to sub–paragraph (b) of paragraph (2) —

(a) the Agency shall nominate a person to determine the matter from the list established under paragraph (6);

(b) the person so nominated shall serve a notice on the person requesting the opportunity to be heard and the Agency informing them of the time (not being less than 21 days from the giving of the notice) of the hearing; and

(c) the person so nominated shall, within 21 days of the hearing, notify the person requesting the opportunity to be heard and the Agency of his decision.

(6) The Agency shall establish and maintain a list of people who may be nominated for the purposes of this regulation and shall consult those organisations appearing to it to represent official veterinarians, approved veterinarians and official auxiliaries before including any person on the list.

**Food which has not been produced, processed or distributed in accordance with the Hygiene Regulations**

**27.**—(1) On an inspection of any food, an authorised officer of an enforcement authority may certify that it has not been produced, processed or distributed in compliance with the Hygiene Regulations.

(2) Where any food is certified as mentioned in paragraph (1) it shall be treated for the purposes of section 9 of the Act as failing to comply with food safety requirements.

(3) Where any food certified as mentioned in paragraph (1) is part of a batch, lot or consignment of food of the same class or description, all the food in the batch, lot or consignment shall, until it is proved that it has been produced, processed or distributed in compliance with the Hygiene Regulations, be treated for the purposes of paragraph (2) as having been so certified.

**Service of documents**

**28.**—(1) Any document which is required or authorised under the Hygiene Regulations to be served on a food business operator may be served —

(a) by delivering it to that person;

(b) in the case of an incorporated company or body, by delivering it to their secretary at their registered or principal office, or by sending it in a prepaid letter addressed to him at that office; or

(c) in the case of any other food business operator, by leaving it or sending it in a prepaid letter addressed to him at his usual or last known residence.

(2) Where a document is to be served on a food business operator under the Hygiene Regulations and it is not reasonably practicable to ascertain the name and address of the person on whom it should be served, or the premises of the food business operator are unoccupied, the document may be served by addressing it to the food business operator concerned in the capacity of occupier of those premises (naming them), and —

(a) by delivering it to some other person at the premises; and

(b) if there is no other person at the premises to whom it can be delivered, by affixing it or a copy of it to some conspicuous part of the premises.

**Bulk transport in sea–going vessels of liquid oils or fats and the bulk transport by sea of raw sugar**

**29.** Schedule 3 (bulk transport in sea–going vessels of liquid oils or fats and the bulk transport by sea of raw sugar) shall have effect.

**Temperature control requirements**

**30.** Schedule 4 (temperature control requirements) shall have effect.

**Direct supply by the producer of small quantities of meat from poultry or lagomorphs slaughtered on the farm**

**31.** Schedule 5 (direct supply by the producer of small quantities of meat from poultry or lagomorphs slaughtered on the farm) shall have effect.

**Restrictions on the sale of raw milk intended for direct human consumption**

**32.** Schedule 6 (restrictions on the sale of raw milk intended for direct human consumption) shall have effect.

**Consequential amendments**

**33.**—(1) In so far as they apply in relation to England, the instruments specified in Schedule 7 are amended to the extent specified there.

(2) For Note 3 to Schedule 1 to the Condensed Milk and Dried Milk (England) Regulations 2003(**17**) (partly or wholly dehydrated preserved milk products and their reserved descriptions) there is substituted the following Note —

"**3.** The preservation of the designated products shall be achieved —

(a) by heat treatment for the products referred to in paragraph 1(a) to (d) of column 1 of this Schedule;

(b) by the addition of sucrose for the products referred to in paragraph 1(e) to (g) of column 1 of this Schedule; and

(c) by dehydration for the products referred to in paragraph 2 of column 1 of this Schedule.".

**Revocation**

**34.** The Food Hygiene (England) Regulations 2005(**18**) are revoked.

Signed by authority of the Secretary of State for Health

*Caroline Flint*
Parliamentary Under Secretary of State,
Department of Health

9th January 2006

(**17**) S.I. 2003/1596, amended by S.I. 2004/2145.
(**18**) S.I.2005/2059.

## SCHEDULE 1

Regulation 2(1)

## DEFINITIONS OF COMMUNITY LEGISLATION

"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(**19**);

"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(**20**) as last amended by Regulation 1642/2003;

"Regulation 1642/2003" means Regulation (EC) No. 1642/2003 of the European Parliament and of the Council amending Regulation (EC) No. 178/2002 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(**21**);

"Regulation 852/2004" means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs(**22**) as read with Regulation 2073/2005;

"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(**23**) as amended by Regulation 2074/2005 and Regulation 2076/2005 and as read with Directive 2004/41, Regulation 1688/2005, Regulation 2074/2005 and Regulation 2076/2005;

"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(**24**) as amended by Regulation 882/2004, Regulation 2074/2005 and Regulation 2076/2005 and as read with Directive 2004/41, Regulation 2074/2005, Regulation 2075/2005 and Regulation 2076/2005;

"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(**25**) as read with Regulation 2074/2005 and Regulation 2076/2005;

"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 guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs(**26**);

"Regulation 2073/2005" means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs(**27**);

"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

(**19**) OJ No. L157, 30.4.2004, p.33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (OJ No. L195, 2.6.2004, p.12).
(**20**) OJ No. L31, 1.2.2002, p.1.
(**21**) OJ No. L245, 29.9.2003, p.4.
(**22**) OJ No. L139, 30.4.2004, p.1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.3).
(**23**) OJ No. L139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.22).
(**24**) OJ No. L139, 30.4.2004, p.206. The revised text of Regulation (EC) No. 854/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.83).
(**25**) OJ No. L165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (OJ No. L191, 28.5.2004, p.1).
(**26**) OJ No. L271, 15.10.2005, p.17.
(**27**) OJ No. L338, 22.12.2005, p.1.

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(**28**);

"Regulation 2075/2005" means Commission Regulation (EC) No. 2075/2005 laying down specific rules on official controls for *Trichinella* in meat(**29**); and

"Regulation 2076/2005" means Commission Regulation (EC) No. 2076/2005 laying down transitional arrangements 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 and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(**30**).

## SCHEDULE 2

Regulations 2(1) and 17

## SPECIFIED COMMUNITY PROVISIONS

| *1.Provision of Community Regulations* | *2.Subject-matter* |
|---|---|
| Article 3 of Regulation 852/2004 | Requirement that food business operators ensure that all stages of production, processing and distribution of food under their control satisfy the relevant hygiene requirements laid down in Regulation 852/2004. |
| Article 4(1) of Regulation 852/2004 | Requirement that food business operators carrying out primary production and specified associated operations comply with the general hygiene provisions laid down in Part A of Annex I to Regulation 852/2004 and any specific requirements provided for in Regulation 853/2004. |
| Article 4(2) of Regulation 852/2004 | Requirement that food business operators carrying out any stage of production, processing and distribution of food after those stages to which Article 4(1) applies comply with the general hygiene requirements laid down in Annex II to Regulation 852/2004 and any specific requirements provided for in Regulation 853/2004. |
| Article 4(3) of Regulation 852/2004 | Requirement that food business operators, as appropriate, adopt certain specific hygiene measures. |
| Article 5(1) of Regulation 852/2004 | Requirement that food business operators put in place, implement and maintain a permanent procedure or procedures based on the HACCP principles. |

(**28**) OJ No. L338, 22.12.2005, p.27.
(**29**) OJ No. L338, 22.12.2005, p.60.
(**30**) OJ No. L338, 22.12.2005, p.83.

| *1.Provision of Community Regulations* | *2.Subject-matter* |
|---|---|
| Article 5(2) of Regulation 852/2004 | Requirement that when any modification is made in the product, process, or any step, food business operators review the procedure referred to in Article 5(1) and make the necessary changes to it. |
| Article 5(4)(a) of Regulation 852/2004 | Requirement that food business operators provide the competent authority with evidence of their compliance with Article 5(1). |
| Article 5(4)(b) of Regulation 852/2004 | Requirement that food business operators ensure that any documents describing the procedures developed in accordance with Article 5 are up to date. |
| Article 5(4)(c) of Regulation 852/2004 | Requirement that food business operators retain documents and records for an appropriate period. |
| Article 6(1) of Regulation 852/2004 | Requirement that food business operators co–operate with the competent authorities in accordance with other applicable Community legislation or national law. |
| Article 6(2), first paragraph of Regulation 852/2004 | Requirement that a food business operator notify the competent authority of each establishment under its control that carries out any of the stages of production, processing and distribution of food. |
| Article 6(2), second paragraph of Regulation 852/2004 | Requirement that food business operators ensure that the competent authority has up to date information on establishments. |
| Article 6(3) of Regulation 852/2004 | Requirement that food business operators ensure that establishments are approved by the competent authority when approval is required. |
| Article 3(1) of Regulation 853/2004 | Requirement that food business operators comply with the relevant provisions of Annexes II and III to Regulation 853/2004. |
| Article 3(2) of Regulation 853/2004 | Requirement that food business operators do not use any substance other than potable water or, when Regulation 852/2004 or Regulation 853/2004 permits its use, clean water, to remove surface contamination from products of animal origin unless use of the substance has been approved. |
| Article 4(1) of Regulation 853/2004 | Requirement that food business operators place products of animal origin manufactured in the Community on the market only if they have been prepared and handled exclusively in establishments — |

| *1.Provision of Community Regulations* | *2.Subject-matter* |
|---|---|
| | (a) that meet the relevant requirements of Regulation 852/2004, those of Annexes II and III of Regulation 853/2004 and other relevant requirements of food law; and<br>(b) that the competent authority has registered or, where required in accordance with Article 4(2), approved. |
| Article 4(2) of Regulation 853/2004 | Requirement that establishments handling those products of animal origin for which Annex III to Regulation 853/2004 lays down requirements do not operate unless the competent authority has approved them in accordance with Article 4(3). |
| Article 4(3) of Regulation 853/2004 | Requirement that establishments subject to approval in accordance with Article 4(2) do not operate unless the competent authority has, in accordance with Regulation 854/2004 —<br>(a) granted the establishment approval to operate following an on–site visit; or<br>(b) provided the establishment with conditional approval. |
| Article 4(4) of Regulation 853/2004 | Requirement that food business operators co–operate with the competent authorities in accordance with Regulation 854/2004 including ensuring that an establishment ceases to operate if it is no longer approved. |
| Article 5(1) of Regulation 853/2004 | Requirement that food business operators do not place on the market a product of animal origin handled in an establishment subject to approval in accordance with Article 4(2) unless it has —<br>(a) a health mark applied in accordance with Regulation 854/2004; or<br>(b) when Regulation 854/2004 does not provide for the application of a health mark, an identification mark applied in accordance with Section 1 of Annex II to Regulation 853/2004. |
| Article 5(2) of Regulation 853/2004 | Requirement that food business operators apply an identification mark to a product of animal origin only if the product has been manufactured in accordance with Regulation 853/2004 in establishments meeting the requirements of Article 4. |
| Article 5(3) of Regulation 853/2004 | Requirement that food business operators do not remove a health mark applied in accordance with Regulation 854/2004 from meat unless |

| *1.Provision of Community Regulations* | *2.Subject-matter* |
|---|---|
| | they cut or process it or work upon it in another manner. |
| Article 6(1) and (2) of Regulation 853/2004 | Requirement that food business operators ensure that importation of products of animal origin only takes place where certain conditions are met. |
| Article 6(3) of Regulation 853/2004 | Requirement that food business operators importing products of animal origin shall ensure that —<br>(a) products are made available for control upon importation in accordance with Council Directive 97/78/EC(**31**);<br>(b) importation complies with the requirements of Council Directive 2002/99/EC(**32**); and<br>(c) operations under their control that take place after importation are carried out in accordance with the requirements of Annex III to Regulation 853/2004. |
| Article 6(4) of Regulation 853/2004 | Requirement that food business operators importing food containing both products of plant origin and processed products of animal origin ensure that the processed products of animal origin satisfy the requirements of paragraphs (1) to (3) of Article 6. |
| Article 7 of Regulation 853/2004 | Requirement that food business operators ensure that certificates or other documents accompany consignments of products of animal origin when required in accordance with Annex II or III to Regulation 853/2004. |
| Article 8 of Regulation 853/2004 | Requirement that food business operators intending to place specified foods of animal origin on the market in Sweden or Finland comply with the rules set out in Article 8(2). |
| Article 7(1) of Regulation 2073/2005 | Requirement that food business operators take the measures laid down in paragraphs (2) to (4) of Article 7 when the results of testing against the criteria set out in Annex I to Regulation 2073/2005 (microbiological criteria for foodstuffs) are unsatisfactory. |
| Article 9 of Regulation 2075/2005 | Requirement that food business operators of holdings recognised as free from *Trichinella* inform the competent authority of any requirement as laid down in Chapter I and II(B) of Annex IV to Regulation 2075/2005 (detailed |

(**31**) OJ No. L24, 30.1.1998, p.9.
(**32**) OJ No. L18, 23.1.2003, p.11.

| *1.Provision of Community Regulations* | *2.Subject-matter* |
|---|---|
| | conditions for *Trichinella-free* holdings and regions with a negligible *Trichinella* risk) that is no longer fulfilled or of any other change that might affect holdings' *Trichinella*-free status. |

SCHEDULE 3 Regulation 29

BULK TRANSPORT IN SEA–GOING VESSELS OF LIQUID OILS OR FATS AND THE BULK TRANSPORT BY SEA OF RAW SUGAR

**Offence**

**1.** A person who contravenes or fails to comply with any of the requirements of this Schedule shall be guilty of an offence.

**Liquid oils or fats**

**2.**—(1) The bulk transport in sea–going vessels of liquid oils or fats which are to be processed, and which are intended for or likely to be used for human consumption, is permitted in tanks that are not exclusively reserved for the transport of foodstuffs, subject to the following conditions —

(a) where the oil or fat is transported in a stainless steel tank, or tank lined with epoxy resin or technical equivalent, the immediately previous cargo transported in the tank shall have been a foodstuff or a cargo from the list of acceptable previous cargoes for liquid oils or fats; and

(b) where the oil or fat is transported in a tank of materials other than those specified in sub–paragraph (a), the three previous cargoes transported in the tanks shall have been foodstuffs or from the list of acceptable previous cargoes for liquid oils or fats.

(2) For the purposes of this paragraph, "list of acceptable previous cargoes for liquid oils or fats" means the list set out in the Annex to Commission Directive 96/3/EC.

**3.** The bulk transport in sea–going vessels of liquid oils or fats which are not to be further processed, and which are intended for or are likely to be used for human consumption, is permitted in tanks that are not exclusively reserved for the transport of foodstuffs, subject to the following conditions —

(a) the tank shall be of stainless steel or lined with epoxy resin or technical equivalent; and

(b) the three previous cargoes transported in the tank shall have been foodstuffs.

**4.** The captain of a sea–going vessel transporting, in tanks, bulk liquid oils or fats intended for or likely to be used for human consumption shall keep accurate documentary evidence relating to the three previous cargoes carried in the tanks concerned, and the effectiveness of the cleaning process applied between those cargoes.

**5.** Where the cargo has been trans–shipped, in addition to the documentary evidence required by virtue of paragraph 4, the captain of the receiving vessel shall keep accurate documentary evidence that the transport of the bulk liquid oil or fat complied with the provisions of paragraph 2 or 3 during previous shipment and of the effectiveness of the cleaning process used between those cargoes on the vessel from which they were trans–shipped.

(**31**) OJ No. L24, 30.1.1998, p.9.
(**32**) OJ No. L18, 23.1.2003, p.11.

**6.** Upon request, the captain of the vessel shall provide the enforcement authority with the documentary evidence described in paragraphs 4 and 5.

### Raw sugar

**7.** The bulk transport by sea of raw sugar which is not intended for use as food or as a food ingredient without a full and effective refining process is permitted in receptacles, containers or tankers that are not exclusively used for the transport of foodstuffs.

**8.** The receptacles, containers or tankers referred to in paragraph 7 shall be subject to the following conditions —

(a) prior to loading the raw sugar, the receptacle, container or tanker shall be effectively cleaned to remove residues of the previous cargo and other soiling and inspected to establish that such residues have been removed effectively; and

(b) the immediate previous cargo prior to the raw sugar shall not have been a bulk liquid.

**9.** A food business operator who is responsible for the transport of raw sugar by sea under paragraph 7 shall keep documentary evidence, accurately describing in detail the immediate previous cargo carried in the receptacle, container or tanker concerned, and the type and effectiveness of the cleaning process applied prior to the transport of the raw sugar.

**10.** The documentary evidence shall accompany the consignment of raw sugar during all stages of transport to the refinery and a copy shall be retained by the refinery. The documentary evidence shall be marked as follows in a clearly visible and indelible fashion, in one or more Community languages: "This product must be refined before being used for human consumption".

**11.** On request, a food business operator responsible for the transport of the raw sugar or the refining process shall provide the enforcement authority with the documentary evidence referred to in paragraphs 9 and 10.

**12.** Raw sugar which has been transported by sea in receptacles, containers or tankers which are not exclusively reserved for the transport of foodstuffs shall be subjected to a full and effective refining process before being considered suitable for use as food or as a food ingredient.

**13.** In fulfilling his obligations under Article 5(1) of Regulation 852/2004 (hazard analysis and critical control points) in relation to the bulk transport of raw sugar by sea under paragraph 7, a food business operator who is responsible for the transport or refining of raw sugar shall —

(a) consider the cleaning process undertaken prior to the loading of the sugar for transport by sea to be a critical control point as referred to in Article 5(2)(b) of Regulation 852/2004; and

(b) take into account the nature of the previous cargo which has been transported in any receptacle, container or tanker used for the transport of the sugar.

### Interpretation

**14.**—(1) For the purposes of this Schedule any words or expressions used both in this Schedule and in Commission Directive 96/3/EC or Commission Directive 98/28/EC granting a derogation from certain provisions of Directive 93/43/EEC on the hygiene of foodstuffs as regards the transport by sea of bulk raw sugar(**33**) shall bear the same meanings as they respectively have in those Directives.

(2) In this Schedule, "Commission Directive 96/3/EC" means Commission Directive 96/3/EC granting a derogation from certain provisions of Council Directive 93/43/EEC on the hygiene of

(**33**) OJ No. L140, 12.5.98, p.10.

foodstuffs as regards the transport of bulk liquid oils and fats by sea(**34**) as amended by Commission Directive 2004/4/EC amending Directive 96/3/EC granting a derogation from certain provisions of Council Directive 93/43/EEC on the hygiene of foodstuffs as regards the transport of bulk liquid oils and fats by sea(**35**).

## SCHEDULE 4

Regulation 30

## TEMPERATURE CONTROL REQUIREMENTS

### Scope

**1.** This Schedule does not apply in relation to —

(a) any food business operation to which Regulation 853/2004 applies; or

(b) any food business operation carried out on a ship or aircraft.

### Chill holding requirements

**2.**—(1) Subject to sub–paragraph (2) and paragraph 3, any person who keeps any food —

(a) which is likely to support the growth of pathogenic micro–organisms or the formation of toxins; and

(b) with respect to which any commercial operation is being carried out,

at or in food premises at a temperature above 8°C shall be guilty of an offence.

(2) Sub–paragraph (1) shall not apply in relation to any food which, as part of a mail order transaction, is being conveyed to the final consumer.

(3) Subject to paragraph 3, no person shall supply by mail order any food which —

(a) is likely to support the growth of pathogenic micro-organisms or the formation of toxins; and

(b) is being or has been conveyed by post or by a private or common carrier to the final consumer,

at a temperature which has given rise to or is likely to give rise to a risk to health.

### General exemptions from the chill holding requirements

**3.** Sub–paragraphs (1) and (3) of paragraph 2 shall not apply in relation to —

(a) food which —

(i) has been cooked or reheated,

(ii) is for service or on display for sale, and

(iii) needs to be kept at or above 63°C in order to control the growth of pathogenic micro–organisms or the formation of toxins;

(b) food which, for the duration of its shelf life may be kept at ambient temperatures with no risk to health;

(**34**) OJ No. L21, 27.1.96, p.42.
(**35**) OJ No. L15, 22.1.2004, p.25.

(c) food which is being or has been subjected to a process such as dehydration or canning intended to prevent the growth of pathogenic micro–organisms at ambient temperatures, but not where —

(i) after or by virtue of that process the food was contained in a hermetically sealed container, and

(ii) that container has been opened;

(d) food which must be ripened or matured at ambient temperatures, but not when the process of ripening or maturation is completed;

(e) raw food intended for further processing (including cooking) before human consumption, but only if that processing, if undertaken correctly, will render that food fit for human consumption;

(f) food to which Council Regulation 1906/90 applies; and

(g) food to which Council Regulation 1907/90 applies.

**Upward variation of the 8°C temperature by manufacturers etc.**

**4.**—(1) In any proceedings for an offence consisting of a contravention of sub–paragraph (1) of paragraph 2, it shall be a defence for the accused to prove that —

(a) a food business responsible for manufacturing, preparing or processing the food, including, where relevant, the accused, has recommended that it is kept —

(i) at or below a specified temperature between 8°C and ambient temperatures, and

(ii) for a period not exceeding a specified shelf life;

(b) that recommendation has, unless the accused is that food business, been communicated to the accused either by means of a label on the packaging of the food or by means of some other appropriate form of written instruction;

(c) the food was not kept by the accused at a temperature above the specified temperature; and

(d) at the time of the commission of the alleged offence, the specified shelf life had not been exceeded.

(2) A food business responsible for manufacturing, preparing or processing food shall not recommend that any food is kept —

(a) at or below a specified temperature between 8°C and ambient temperatures; and

(b) for a period not exceeding a specified shelf life,

unless that recommendation is supported by a well–founded scientific assessment of the safety of the food at the specified temperature.

**Chill holding tolerance periods**

**5.**—(1) In any proceedings for an offence consisting of a contravention of sub–paragraph (1) of paragraph 2, it shall be a defence for the accused to prove that the food —

(a) was for service or on display for sale;

(b) had not previously been kept for service or on display for sale at a temperature above 8°C or, where a recommendation has been made pursuant to sub–paragraph (1) of paragraph 4, the recommended temperature; and

(c) had been kept for service or on display for sale for a period of less than four hours.

(2) In any proceedings for an offence consisting of a contravention of sub–paragraph (1) of paragraph 2, it shall be a defence for the accused to prove that the food —

(a) was being transferred —

(i) from premises at which the food was going to be kept at or below 8°C or in appropriate circumstances the recommended temperature to a vehicle used for the purposes of a food business, or

(ii) to such premises from such a vehicle; or

(b) was kept at a temperature above 8°C or, in appropriate circumstances, the recommended temperature for an unavoidable reason, such as —

(i) to accommodate the practicalities of handling during and after processing or preparation,

(ii) the defrosting of equipment, or

(iii) temporary breakdown of equipment,

and was kept at a temperature above 8°C or, in appropriate circumstances, the recommended temperature for a limited period only and that period was consistent with food safety.

**Hot holding requirements**

**6.** Any person who in the course of the activities of a food business keeps at or in food premises at a temperature below 63°C any food which —

(a) has been cooked or reheated;

(b) is for service or on display for sale; and

(c) needs to be kept at or above 63°C in order to control the growth of pathogenic micro–organisms or the formation of toxins,

shall be guilty of an offence.

**Hot holding defences**

**7.** In any proceedings for an offence consisting of a contravention of paragraph 6, it shall be a defence for the accused to prove that —

(a) a well–founded scientific assessment of the safety of the food at temperatures below 63°C has concluded that there is no risk to health if, after cooking or re–heating, the food is held for service or on display for sale —

(i) at a holding temperature which is below 63°C, and

(ii) for a period not exceeding any period of time specified in that scientific assessment; and

(b) at the time of the commission of the alleged offence, the food was held in a manner which was justified in the light of that scientific assessment.

(2) In any proceedings for an offence consisting of a contravention of paragraph 6, it shall be a defence for the accused to prove that the food —

(a) had been kept for service or on display for sale for a period of less than two hours; and

(b) had not previously been kept for service or on display for sale by that person.

**Interpretation**

**8.** In this Schedule —

"Council Regulation 1906/90" means Council Regulation (EEC) No. 1906/90 on certain marketing standards for poultry(**36**) as last amended by Council Regulation (EC) No. 1101/98 amending Regulation (EEC) No. 1906/90 on certain marketing standards for poultrymeat(**37**);

"Council Regulation 1907/90" means Council Regulation (EEC) No. 1907/90 on certain marketing standards for eggs(**38**) as last amended by Council Regulation (EC) No. 2052/2003 amending Regulation (EEC) No. 1907/90 on certain marketing standards for eggs(**39**);

"recommended temperature" means a specified temperature which has been recommended in accordance with sub–paragraph (1)(a)(i) of paragraph 4; and

"shelf life" means —

(a) in relation to food with respect to which an indication of minimum durability is required in accordance with regulation 20 of the Food Labelling Regulations 1996(**40**) (form of indication of minimum durability), the period up to and including the date required to be included in that indication;

(b) in relation to food with respect to which a "use by" date is assigned in the form required in accordance with regulation 21 of the Food Labelling Regulations 1996 (form of indication of "use by" date), the period up to and including that date; and

(c) in relation to food which is not required to bear an indication of minimum durability or a "use by" date, the period for which the food can be expected to remain fit for sale if it is kept in a manner which is consistent with food safety.

## SCHEDULE 5

Regulation 31

## DIRECT SUPPLY BY THE PRODUCER OF SMALL QUANTITIES OF MEAT FROM POULTRY OR LAGOMORPHS SLAUGHTERED ON THE FARM

### Scope

**1.** The requirements of this Schedule apply in relation to the direct supply by the producer of small quantities of meat from poultry or lagomorphs that have been slaughtered on the farm to the final consumer or to local retail establishments directly supplying such meat to the final consumer.

### Requirements

**2.**—(1) Where a producer supplies meat in the manner described in paragraph 1, he shall ensure that it bears a label or other marking clearly indicating the name and address of the farm where the animal from which it is derived was slaughtered.

(2) The producer shall —

(a) keep a record in adequate form to show the number of birds and the number of lagomorphs received into, and the amounts of fresh meat despatched from, his premises during each week;

(b) retain the record for a period of one year; and

(c) make the record available to an authorised officer on request.

(**36**) OJ No. L173, 6.7.90, p.1.
(**37**) OJ No. L157, 30.5.98, p.12.
(**38**) OJ No. L173, 6.7.90, p.5.
(**39**) OJ No. L305, 22.11.2003, p.1.
(**40**) S.I. 1996/1499, to which there are amendments not relevant to these Regulations.

**Offence**

**3.** A producer who fails to comply with any of the requirements of paragraph 2 shall be guilty of an offence.

SCHEDULE 6 Regulation 32

RESTRICTIONS ON THE SALE OF RAW MILK
INTENDED FOR DIRECT HUMAN CONSUMPTION

**1.** Any person who sells raw milk intended for direct human consumption in contravention of paragraph 5 shall be guilty of an offence.

**2.**—(1) If any person other than the occupier of a production holding or a distributor sells raw cows' milk intended for direct human consumption he shall be guilty of an offence.

(2) If the occupier of a production holding sells raw cows' milk intended for direct human consumption in contravention of paragraph 3 he shall be guilty of an offence.

(3) If a distributor sells raw cows' milk intended for direct human consumption in contravention of paragraph 4 he shall be guilty of an offence.

**3.** The occupier of a production holding may only sell raw cows' milk intended for direct human consumption —

(a) at or from the farm premises where the animals from which the milk has been obtained are maintained; and

(b) to —

(i) the final consumer for consumption other than at those farm premises,

(ii) a temporary guest or visitor to those farm premises as or as part of a meal or refreshment, or

(iii) a distributor.

**4.** A distributor may only sell raw cows' milk intended for direct human consumption —

(a) which he has bought pursuant to sub–paragraph (b)(iii) of paragraph 3;

(b) in the containers in which he receives the milk, with the fastenings of the containers unbroken;

(c) from a vehicle which is lawfully used as a shop premises; and

(d) direct to the final consumer.

**5.** The raw milk shall meet the following standards:

| | |
|---|---|
| Plate count at 30°C (cfu per ml) | ≤ 20,000 |
| Coliforms (cfu per ml) | < 100 |

**6.** In the case where farm premises are being used for the sale of raw cows' milk intended for direct human consumption pursuant to sub–paragraph (a) of paragraph 3, the Agency shall carry out such sampling, analysis and examination of the milk as it considers necessary to ensure that it meets the standards specified in paragraph 5.

**7.** In any case where the Agency carries out sampling, analysis and examination of raw cows' milk in accordance with paragraph 6, there shall be due to the Agency from the occupier of the

production holding who is selling the milk a fee of £63, which is payable by the occupier to the Agency on demand.

**8.** In this Schedule —

"distributor" means a person who sells raw cows' milk that has been produced on a production holding of which he is not the occupier;

"farm premises" means a farm occupied by the occupier of a production holding as a single farm and includes the production holding and any other building situated on that farm and occupied by the same occupier;

"occupier" means any person carrying on the business of producing or handling raw cows' milk or his duly authorised representative;

"production holding" means premises at which milk-producing cows are kept; and

"shop premises" means premises from which any food is sold to the final consumer.

## SCHEDULE 7

Regulation 33

## CONSEQUENTIAL AMENDMENTS

### The Colours in Food Regulations 1995

**1.** The Colours in Food Regulations 1995(**41**) are amended as provided in paragraph 2.

**2.** In regulation 4 (health marking etc. of certain meat and meat products) for the words "as provided for in the Fresh Meat (Hygiene and Inspection) Regulations 1995" there are substituted the words "as required by the Food Hygiene (England) Regulations 2006".

### The Animal By-Products (Identification) Regulations 1995

**3.** The Animal By-Products (Identification) Regulations 1995(**42**) are amended as provided in paragraphs 4 to 11.

**4.** In paragraph (1) of regulation 2 (interpretation) —

(a) for the definition of "animal by-products premises" there is substituted the following definition —

> ""animal by-products premises" means premises, other than a cold store, cutting plant, game-handling establishment or slaughterhouse, from which animal by-products are despatched to other premises;";

(b) for the definition of "cold store" there is substituted the following definition —

> ""cold store" means any premises, not forming part of a cutting plant, game-handling establishment or slaughterhouse, used for the storage, under temperature controlled conditions, of fresh meat intended for sale for human consumption;";

(c) for the definition of "cutting premises" there is substituted the following definition —

> ""cutting plant" has the meaning that it bears in regulation 5(6) of the Hygiene Regulations;";

(**41**) S.I. 1995/3124, to which there are amendments not relevant to these Regulations.
(**42**) S.I. 1995/614, amended by S.I. 1995/1955, S.I. 1996/3124, S.I. 1997/2073, S.I. 2000/656, S.I. 2002/1619, S.I. 2002/3231 and S.I. 2003/1484.

(d) immediately after the definition of "farmed game" there is inserted the following definition —

""fresh meat" means meat that has not undergone any preserving process other than chilling, freezing or quick freezing, including meat that is vacuum-wrapped or wrapped in a controlled atmosphere;";

(e) for the definition of "game processing facility" there is substituted the following definition —

""game-handling establishment" has the meaning that it bears in regulation 5(6) of the Hygiene Regulations;";

(f) for the definition of "the Hygiene Regulations" there is substituted the following definition —

""the Hygiene Regulations" means the Food Hygiene (England) Regulations 2006;";

(g) for the definition of "occupier" there is substituted the following definition —

""occupier" means a person carrying on the business of any cold store, cutting plant, game-handling establishment, slaughterhouse or animal by-products premises, or the duly authorised representative of such a person;"; and

(h) for the definition of "slaughterhouse" there is substituted the following definition—

""slaughterhouse" has the meaning that it bears in regulation 5(6) of the Hygiene Regulations;".

**5.** In paragraph (a) of regulation 4 (scope) for the words "in accordance with the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995" there are substituted the words "in accordance with the Hygiene Regulations".

**6.** In paragraph (2)(c) of regulation 5 (exemptions) for the words "cutting premises, slaughterhouse, game processing facility" there are substituted the words "cutting plant, game-handling establishment, slaughterhouse".

**7.** For regulation 6 (staining of animal by-products in cold stores, cutting premises, game processing facilities or slaughterhouses) there is substituted the following regulation —

"**Staining of animal by-products in cold stores, cutting plants, game-handling establishments and slaughterhouses**

**6.**—(1) Subject to paragraph (2) below, it shall be the duty of the occupier of any cold store, cutting plant, game-handling establishment or slaughterhouse to ensure that any animal by-product is stained without undue delay.

(2) The duty imposed by paragraph (1) above shall not apply in relation to any animal by-product which —

(a) is —

(i) immediately moved to accommodation in the relevant cold store, cutting plant, game-handling establishment or slaughterhouse,

(ii) placed in a suitable, sufficient and lockable receptacle with closely fitting covers that is only used for holding meat rejected as unfit for human consumption and is clearly marked to that effect, and

(iii) stained by the operator concerned as soon as practicable after it has been placed in the receptacle; or

(b) is immediately moved, in the manner specified in paragraph (4), to an approved rendering plant for rendering there, or to an approved incineration plant which is adequately separated from the cold store, cutting plant, game-handling establishment or slaughterhouse concerned for incineration there.

(3) The occupier of any cold store, cutting plant, game-handling establishment or slaughterhouse shall ensure that any animal by-product which is placed in a receptacle in accordance with paragraph (2) above is stained and removed from the relevant cold store, cutting plant, game-handling establishment or slaughterhouse as soon as is reasonably practicable.

(4) The manner is that the animal by-product is moved through a sealed and leak-proof pipe which connects the cold store, cutting plant, game-handling establishment or slaughterhouse concerned directly with the relevant approved rendering plant or, as the case may be, approved incineration plant.".

**8.** For regulation 8 (freezing of animal by-products in any animal by-products premises, cold store, cutting premises, game processing facility or slaughterhouse) there is substituted the following regulation —

"**Freezing of animal by-products in any animal by-products premises, cold store, cutting plant, game-handling establishment or slaughterhouse**

**8.**—(1) Subject to paragraph (2) below, no person shall freeze any animal by-product in any animal by-products premises, cold store, cutting plant, game-handling establishment or slaughterhouse unless it has been stained in accordance with these Regulations.

(2) Paragraph (1) above shall not apply in the case of any animal by-product which is intended to be removed from the relevant animal by-products premises, cold store, cutting plant, game-handling establishment or slaughterhouse in accordance with regulation 10(2).".

**9.** In regulation 9 (storage and packaging of animal by-products) —

(a) for paragraph (2) there is substituted the following paragraph —

"(2) The prohibition contained in paragraph (1) above shall not apply in relation to an animal by-product which is stored in a suitable, sufficient and lockable receptacle with closely fitting covers that is only used for holding meat rejected as unfit for human consumption and is clearly marked to that effect."; and

(b) in paragraph (3) for the words "cutting premises, game processing facility" there are substituted the words "cutting plant, game-handling establishment".

**10.** In regulation 10 (restriction on movement of animal by-products) —

(a) in paragraph (1) for the words "cutting premises, game processing facility" there are substituted the words "cutting plant, game-handling establishment"; and

(b) in paragraph (2) for the words "cutting premises, game processing facility" there are substituted the words "cutting plant, game-handling establishment".

**11.** In paragraph (1) of regulation 12 (enforcement) —

(a) in sub-paragraph (a) for the words "in relation to premises licensed under the Hygiene Regulations" there are substituted the words "in relation to any cutting plant, game-handling establishment or slaughterhouse"; and

(b) for sub-paragraph (b) there is substituted the following sub-paragraph —

"(b) in relation to any other premises, by the Agency or the food authority within whose area the premises are situated.".

**The Food Labelling Regulations 1996**

**12.** The Food Labelling Regulations 1996(**43**) are amended as provided in paragraphs 13 and 14.

**13.** In Schedule 3 (generic names in list of ingredients) in the entry in column 2 of Part I (general) opposite to the entry in column 1 for ""Meat" and the name of the animal species from which it comes, *or* a word which describes the meat by reference to the animal species from which it comes" for the words "(g) any products covered by the definition of "mechanically recovered meat" in Article 2(c) of Council Directive 64/433/EEC on health conditions for the production and marketing of fresh meat, as last amended by Council Directive 95/23/EC." there are substituted the words specified in paragraph 14.

**14.** The words are "(g) the product obtained by removing the meat from flesh-bearing bones after boning or from carcases of farmed birds (including birds that are not considered as domestic but which are farmed as domestic animals, but not including ratites) using mechanical means resulting in the loss or modification of the muscle fibre structure.".

**The Beef Bones Regulations 1997**

**15.** The Beef Bones Regulations 1997(**44**) are amended as provided in paragraphs 16 and 17.

**16.** In paragraph (1) of regulation 2 (interpretation) —

(a) immediately after the definition of "carcase" the following definition is inserted —

""cutting plant" has the meaning that it bears in regulation 5(6) of the Hygiene Regulations;";

(b) immediately after the definition of "fresh meat" the following definitions are inserted —

""game-handling establishment" has the meaning that it bears in regulation 5(6) of the Hygiene Regulations;

"the Hygiene Regulations" means the Food Hygiene (England) Regulations 2006;"; and

(c) immediately after the definition of "occupier" the following definitions are inserted —

""official veterinarian" means a veterinarian who is qualified in accordance with Regulation 854/2004 to act in such a capacity and is appointed by the Agency;

"Regulation 854/2004" has the meaning that it bears in Schedule 1 to the Hygiene Regulations; and

"slaughterhouse" has the meaning that it bears in regulation 5(6) of the Hygiene Regulations;".

**17.** In regulation 12 (enforcement) —

(a) for paragraph (1) there is substituted the following paragraph —

"(1) These Regulations shall be enforced —

(a) by the Agency in relation to any cutting-plant, game-handling establishment or slaughterhouse; and

(**43**) S.I. 1996/1499, amended by S.I. 1998/141, S.I. 1998/1398, S.I. 1998/2424, S.I. 1999/747, S.I. 1999/1136, S.I. 1999/1483, S.I. 1999/1540, S.I. 1999/1603, S.I. 2000/768, S.I. 2000/2254, S.I. 2000/3323, S.I. 2001/2294, S.I. 2001/3442, S.I. 2001/3775, S.I. 2002/379, S.I. 2003/461, S.I. 2003/474, S.I. 2003/1182, S.I. 2003/1478, S.I. 2003/1563, S.I. 2003/1596, S.I. 2003/1659, S.I. 2003/2075, S.I. 2003/2243, S.I. 2003/2647, S.I. 2003/3120, S.I. 2003/3295, S.I. 2004/1512, S.I. 2004/2145, S.I. 2004/2824, S.I. 2005/899 and S.I. 2005/2057. S.I. 2005/2057 was itself amended by S.I. 2005/2969.

(**44**) S.I. 1997/2959, amended by S.I. 1999/3371 and S.I. 2000/656.

(b) in relation to any other premises, by the Agency or the food authority within whose area the premises are situated."; and

(b) in paragraph (2) for the words "an official veterinary surgeon (designated as such under regulation 8(1) of the Fresh Meat (Hygiene and Inspection) Regulations 1995)" there are substituted the words "an official veterinarian".

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

**1.** These Regulations revoke and re-enact with changes the Food Hygiene (England) Regulations 2005 (S.I.2005/2059).

**2.** The Food Hygiene (England) Regulations 2005 provided for the execution and enforcement in relation to England of certain Community instruments, referred to in those Regulations as "the Community Regulations". The Community instruments in question are those specified in sub-paragraphs (a) to (c) of paragraph 4 below. By extending the definition of the phrase "the Community Regulations" in these Regulations to include the Community instruments specified in sub-paragraphs (d) and (e) of paragraph 4 below, these Regulations provide for the execution and enforcement in relation to England of all the Community instruments specified in that paragraph.

**3.** The Community instruments specified in paragraph 4 below are defined in Schedule 1. These Regulations update the definitions of the Community instruments specified in sub-paragraphs (a) to (c) of paragraph 4 below to take account of certain Commission Regulations that enter into force on and apply from 11th January 2006. The Commission Regulations amend those Community instruments or as the case may be affect the way that they are to be read.

**4.** The Community instruments are —

(a) Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs (OJ No. L139, 30.4.2004, p.1; the revised text of this Regulation is now set out in a Corrigendum, OJ No. L226, 25.6.2004, p.3);

(b) Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin (OJ No. L139, 30.4.2004, p.55; the revised text of this Regulation is now set out in a Corrigendum, OJ No. L226, 25.6.2004, p.22);

(c) 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 (OJ No. L155, 30.4.2004, p.206; the revised text of this Regulation is now set out in a Corrigendum, OJ No. L226, 25.6.2004, p.83);

(d) Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs (OJ No. L338, 22.12.2005, p.1); and

(e) Commission Regulation (EC) No. 2075/2005 laying down specific rules on official controls for *Trichinella* in meat (OJ No. L338, 22.12.2005, p.60).

**5.** The other major changes made by these Regulations are that —

(a) the previous enforcement arrangements are altered; and

(b) the scope of Schedule 5 (direct supply by the producer of small quantities of meat from poultry or lagomorphs slaughtered on the farm) is extended in the light of Article 3 of Commission Regulation (EC) No. 2076/2005 laying down transitional arrangements 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 and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004 (OJ No. L338, 22.12.2005, p.83).

**6.** These Regulations —

(a) create certain presumptions that, for the purposes of these Regulations, specified food is intended for human consumption (*regulation 3*);

(b) provide that the Food Standards Agency is the competent authority for the purposes of the Community Regulations except where it has delegated competences as provided for in the Community Regulations (*regulation 4*);

(c) make provision for the execution and enforcement of these Regulations and of the Community Regulations (*regulation 5*);

(d) provide for the following enforcement measures to be available in respect of a food business operator —

(i) hygiene improvement notices (*regulation 6*),

(ii) hygiene prohibition orders (*regulation 7*),

(iii) hygiene emergency prohibition notices and orders (*regulation 8*), and

(iv) remedial action notices and detention notices (*regulation 9*);

(e) provide that where the commission of an offence under these Regulations is due to the act or default of some other person that other person is guilty of the offence (*regulation 10*);

(f) provide that in proceedings for an offence under these Regulations it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence (*regulation 11*);

(g) provide for the procurement and analysis of samples (*regulations 12 and 13*);

(h) provide powers of entry for authorised officers of an enforcement authority (*regulation 14*);

(i) create the offence of obstructing an officer (*regulation 15*);

(j) provide a time limit for bringing prosecutions (*regulation 16*);

(k) provide that a person who contravenes or fails to comply with specified provisions of the Community Regulations is guilty of an offence (*regulation 17(1)*);

(l) provide penalties for offences (*regulation 17(2) and (3)*);

(m) provide that a person is considered not to have contravened or failed to comply with a specified provision of Regulation (EC) No. 852/2004 (requirement for bulk foodstuffs in liquid, granulate or powder form to be transported in receptacles and / or containers / tankers reserved for the transport of foodstuffs) provided the requirements of Schedule 3 are complied with (*regulation 17(4)*);

(n) provide that where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate or a person purporting to act as such he as well as the body corporate is deemed to be guilty of that offence and may be proceeded against and punished accordingly (*regulation 18*);

(o) provide that where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner he as well as the partnership

is deemed to be guilty of that offence and may be proceeded against and punished accordingly (*regulation 19*);

(p) provide a right of appeal in respect of —

(i) the service of a hygiene improvement notice or a remedial action notice,

(ii) the refusal of an enforcement authority to issue a certificate under specified provisions to the effect that they are satisfied that a food business operator has taken measures to secure that the health risk condition is no longer fulfilled with respect to the food business concerned, and

(iii) the making of a hygiene prohibition order or a hygiene emergency prohibition order (*regulations 20 to 22*);

(q) provide for the application, for the purposes of these Regulations, of section 9 of the Food Safety Act 1990 (1990 c. 16), but with a specified modification (*regulation 23*);

(r) provide for the issue to food authorities by the Secretary of State of codes of recommended practice (*regulation 24*);

(s) provide for the protection of officers acting in good faith (*regulation 25*);

(t) provide for the revocation or suspension of the designation or as the case may be appointment of specified officials (*regulation 26*);

(u) provide that when an authorised officer of an enforcement authority has certified that any food has not been produced, processed or distributed in compliance with these Regulations and the Community Regulations, it shall be treated for the purposes of section 9 of the Food Safety Act 1990 as failing to comply with food safety requirements (*regulation 27*);

(v) provide for the service of documents (*regulation 28*);

(w) provide that the requirements set out in the following Schedules have effect —

(i) Schedule 3 (bulk transport in sea–going vessels of liquid oils or fats and the bulk transport by sea of raw sugar) (*regulation 29*),

(ii) Schedule 4 (temperature control requirements) (*regulation 30*),

(iii) Schedule 5 (direct supply by the producer of small quantities of meat from poultry or lagomorphs slaughtered on the farm) (*regulation 31*), and

(iv) Schedule 6 (restrictions on the sale of raw milk intended for direct human consumption (*regulation 32*);

(x) make consequential amendments to specified instruments (*regulation 33*); and

(y) revoke the Food Hygiene (England) Regulations 2005 (S.I. 2005/2059) (*regulation 34*).

**7.** A full Regulatory Impact Assessment on 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 Hygiene Implementation Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.