
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 3

The Food Hygiene (Scotland) Regulations 2006

PART 4

MISCELLANEOUS AND SUPPLEMENTARY PROVISIONS

Power to issue codes of recommended practice

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

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

(3) In exercise of the functions conferred on it 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 it 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 an order of the Court of Session under section 45 of the Court of Session Act 1988⁽¹⁾.

(5) The Agency shall consult the Scottish Ministers before making an application under paragraph (4).

(6) Before issuing any code under this regulation, the Scottish Ministers 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 that officer—

- (a) in the execution or purported execution of the Hygiene Regulations; and
- (b) within the scope of the officer's duties,

if the officer did that act in the honest belief that the officer's duties under the Hygiene Regulations required or entitled the doing of it.

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

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

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

(b) outside the scope of the officer's duties,
the authority may indemnify the officer against the whole or a part of any damages which the officer has been ordered to pay or any costs which the officer may have incurred if it is satisfied that the officer honestly believed that the act complained of was within the scope of the officer's duties.

(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 the analyst's 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 that person 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 paragraph (5) (a).

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

- (a) of that person's 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 that person's 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 an application for an opportunity to be heard may be made.

(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 (2) the Agency shall reconsider whether that person is unfit to perform any of the functions of the post they hold 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 paragraph (2)(b)—

- (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 the determination made.

(6) The Agency shall establish and maintain a list of persons 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 its secretary at its registered or principal office, or by sending the document in a prepaid letter addressed to its secretary 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 that person at that person's 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; or
- (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 of raw sugar

29. Schedule 3 (bulk transport in sea-going vessels of liquid oils or fats or 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 and lagomorphs slaughtered on the farm

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

Restrictions on the placing on the market of raw milk and raw cream intended for direct human consumption

32. Schedule 6 (restrictions on the placing on the market of raw milk and raw cream intended for direct human consumption) shall have effect.

Consequential amendments

33. The instruments specified in Schedule 7 are amended to the extent specified in that Schedule.

Revocations

34. The instruments specified in column 1 of Schedule 8 are revoked to the extent specified in column 3 of that Schedule.

Savings

35. For the purposes of these Regulations, any notice served or sample procured under the Food Hygiene (Scotland) Regulations 2005(2) is deemed to have been served or procured under these Regulations.