
SCOTTISH STATUTORY INSTRUMENTS

2006 No. 3

The Food Hygiene (Scotland) Regulations 2006

PART 2

MAIN PROVISIONS

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 the food business operator 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 paragraph (2)(a), a prohibition on the use of the process or treatment for the purposes of the business;
- (b) in a case falling within paragraph (2)(b), 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 paragraph (2)(c), 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 the food business operator 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 a hygiene prohibition order is 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 it is 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 paragraph (6)(a) within 3 days of it 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 it is so satisfied; and
- (b) if it determines that it is not so satisfied, give notice to the food business operator of the reasons for that determination.

(8) The court shall give a direction under paragraph (6)(b) 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 6 months of the making of the hygiene prohibition order; or
- (b) within 3 months of the making by the food business operator of a previous application for such a direction.

(9) Where the sheriff makes an order under regulation 8(2) with respect to any food business, paragraph (1) of this regulation shall apply as if the food business operator had been convicted by the sheriff 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) of this regulation 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.