

**2011 No. 318**

**FOOD**

**The Poultrymeat (Scotland) Regulations 2011**

*Made* - - - - *7th September 2011*

*Laid before the Scottish Parliament* *9th September 2011*

*Coming into force* - - *10th October 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 6(4), 16(1), 17, 26(2) and (3), 45(1) and 48(1) of the Food Safety Act 1990(a) and section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(b) and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for references in these Regulations to the following Regulations to be construed as references to those Regulations as amended from time to time—

- (a) Part B of Annex XIV to Council Regulation (EC) No 1234/2007(c) establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation); and
- (b) Commission Regulation (EC) No 543/2008(d) laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat.

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(a) 1990 c.16. Section 6(4) was amended by paragraph 6 of Schedule 9 to the Deregulation and Contracting Out Act 1994 (c.40), paragraphs 7, 10(1) and (3) of Schedule 5, and Schedule 6, to the Food Standards Act 1999 (c.28) (“the 1999 Act”); sections 16(1), 17(2) and 48(1) were amended by paragraphs 7 and 8 of Schedule 5 to the 1999 Act; section 17 was also amended by paragraph 12 of Schedule 5 to the 1999 Act; section 26(3) was amended by Schedule 6 to the 1999 Act; section 45(1) was amended by paragraphs 8 and 20 of Schedule 5 to the 1999 Act; section 48(4) is disapplied in respect of these Regulations by virtue of section 48(4C) which was inserted by S.I. 2004/2990 as consultation is required in respect of these Regulations by Article 9 of Regulation (EC) No 178/2002; by virtue of section 40(2) of the 1999 Act, amendments made by Schedule 5 to that Act are to be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) (“the 1998 Act”). The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”). Section 2(2) was also amended by section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2), in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, Schedule, Part 1.

(c) OJ L 299, 16.11.2007, p.1. This Regulation was last amended by Regulation (EU) No 1234/2010 (OJ L 346, 30.12.2010, p.11).

(d) OJ L 157, 17.6.2008, p.46, last amended by Commission Implementing Regulation (EU) No 576/2011 (OJ L 159, 17.6.2011, p.66).

The Scottish Ministers have carried out consultation as required by Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(a).

To the extent that these Regulations have been made in exercise of the powers under the Food Safety Act 1990, the Scottish Ministers have had regard to relevant advice given by the Food Standards Agency, as required by section 48(4A) of that Act(b).

### **Citation, commencement, extent and application**

1.—(1) These Regulations may be cited as the Poultrymeat (Scotland) Regulations 2011.

(2) These Regulations come into force on 10th October 2011.

(3) These Regulations extend to Scotland only.

(4) These Regulations apply to poultrymeat described in point I(1) of Part B of Annex XIV to the Single CMO Regulation, excluding poultrymeat described in point I(2) of that Part of that Annex to that Regulation.

(5) These Regulations do not apply to the direct supply of small quantities of poultrymeat by a producer with an annual production of under 10,000 birds where the meat—

(a) comes from poultry slaughtered on the producer's farm; and

(b) is supplied to—

(i) the final consumer; or

(ii) a local retail establishment directly supplying such meat to the final consumer as fresh meat.

### **Interpretation**

2.—(1) In these Regulations—

“the Agency” means the Food Standards Agency;

“authorised officer” means any person who has written authority from an enforcement authority to act in matters arising under these Regulations;

“Commission Regulation” means Commission Regulation (EC) No 543/2008 laying down detailed rules for the application of Council Regulation (EC) No 1234/2007 as regards the marketing standards for poultrymeat, as amended from time to time;

“computer equipment” means any computer, and any associated electronic storage device or apparatus;

“contravene” includes fail to comply, and contravention is to be construed accordingly;

“cutting plant” means an establishment used for boning and/or cutting up meat;

“enforcement authority” means an authority exercising a function conferred on it by regulation 8;

“European poultrymeat provision” means a provision of the Single CMO Regulation or the Commission Regulation specified in column 1 of Part 1 or 2 of Schedule 1, as read with any provision mentioned in the corresponding entry in column 2 of Part 1 or 2 of that Schedule;

“food authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(c);

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(a) OJ L 31, 1.2.2002, p.1, to which there are no amendments relevant to Article 9.

(b) Section 48(4A) was inserted by the Food Standards Act 1999 (c.28), paragraphs 7 and 21 of Schedule 5.

(c) 1994 c.39, as amended by the Environment Act 1995 (c.25), schedule 22, paragraph 232(1).

“poultrymeat” has the meaning given by point II(1) of Part B of Annex XIV to the Single CMO Regulation;

“premises” means any place, including those requiring inspection under Article 12(5)(a) to (d) of the Commission Regulation, and any vehicle, trailer, stall or moveable structure;

“relevant individual” means—

- (a) in relation to a body corporate—
  - (i) a director, manager, secretary or other similar officer of the body;
  - (ii) where the affairs of the body are managed by its members, a member;
- (b) in relation to a Scottish partnership, a partner;
- (c) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association; and

“Single CMO Regulation” means Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation).

(2) In these Regulations, any reference to Part B of Annex XIV to the Single CMO Regulation is a reference to Part B of Annex XIV as amended from time to time.

(3) Any expressions used in these Regulations to which meanings are given in either the Single CMO Regulations or the Commission Regulation have the same meaning as in those EU Regulations.

## **Offences**

3. A person commits an offence if that person contravenes a European poultrymeat provision.

## **Registration as required by Article 12 of the Commission Regulation**

4.—(1) The Scottish Ministers are designated as the competent authority for the purpose of registration of slaughterhouses and producers as required by Article 12 of the Commission Regulation.

(2) Any person who wishes to operate as a slaughterhouse or a producer authorised to use the terms specified in Article 11 of the Commission Regulation must make an application in writing to the Scottish Ministers.

(3) Where the Scottish Ministers receive an application for registration the Scottish Ministers must notify the applicant in writing of the matters specified in paragraph (4) without unreasonable delay.

(4) The specified matters are—

- (a) the Scottish Ministers’ decision on the application;
- (b) the reasons for any refusal of registration; and
- (c) the right of appeal conferred by regulation 5 in the case of any refusal to register.

(5) Where the Scottish Ministers decide to cancel a registration, the Scottish Ministers must notify the producer, or the person carrying on the business of the slaughterhouse concerned, as the case may be, of the matters specified in paragraph (6).

(6) The specified matters are—

- (a) the Scottish Ministers’ decision to cancel the registration;
- (b) the date on which the cancellation is to take effect;
- (c) the reasons for the cancellation; and
- (d) the right of appeal conferred by regulation 5.

### **Appeals against registration decisions**

5.—(1) Any person who is aggrieved about a decision specified in paragraph (2) may appeal against that decision to the sheriff.

(2) The decisions are—

- (a) refusal of registration under regulation 4(3); or
- (b) cancellation of a registration under regulation 4(5).

(3) The Scottish Ministers may be a party to an appeal under this regulation.

(4) An appeal under this regulation must be made by way of summary application and must be lodged with the sheriff clerk within the period of 28 days, beginning with the day on which notification of the decision is given.

(5) On good cause being shown, the sheriff may hear an appeal under this regulation notwithstanding that it was not lodged within the time mentioned in paragraph (4) above.

(6) The cancellation of a registration mentioned in paragraph (2)(b) does not take effect until the time for appealing against it has expired or, if an appeal is lodged, until the appeal is finally disposed of or withdrawn.

### **Powers of a sheriff on appeal**

6.—(1) For the purposes of an appeal under regulation 5, the sheriff may require the Scottish Ministers to give reasons for that decision, and the Scottish Ministers must comply with such a requirement.

(2) The sheriff may uphold an appeal under regulation 5 only if the sheriff considers that the Scottish Ministers, in arriving at their decision—

- (a) erred in law;
- (b) based their decision on any incorrect material fact;
- (c) acted contrary to natural justice; or
- (d) exercised their discretion in an unreasonable manner.

(3) In considering an appeal under regulation 5, the sheriff may hear evidence by or on behalf of any party to the appeal.

(4) On upholding an appeal under regulation 5, the sheriff may—

- (a) remit the case with the reasons for the decision to the Scottish Ministers for reconsideration of their decision; or
- (b) reverse or modify the decision of the Scottish Ministers.

(5) On remitting a case under paragraph (4)(a) above, the sheriff may—

- (a) specify a date by which the reconsideration by the Scottish Ministers must take place;
- (b) modify any procedural steps which otherwise would be required in relation to the matter by or under any enactment (including these Regulations).

(6) The sheriff may include in the decision on an appeal under regulation 5 such order as to the expenses of the appeal as the sheriff thinks proper.

(7) The decision of the sheriff is final.

### **Water content checks**

7.—(1) Except where a water content check required by Article 16(1), (2), (3) or (4) or 20(2), (3) or (4) of the Commission Regulation is carried out by the Agency or food authority, such a check must be carried out by the food business operator of the slaughterhouse or cutting plant concerned.

(2) Except where a water content check referred to in paragraph (1) is carried out by the Agency or food authority, such a check must be carried out—

- (a) at the food business operator's expense; and
- (b) under the responsibility of, and in accordance with any directions given by, the Agency or food authority.

(3) Schedule 2 has effect in relation to the fees payable to the Agency or food authority for water content checks carried out by the Agency or food authority.

(4) In this regulation “food business operator” has the same meaning as in Article 3(3) of Regulation (EC) No 178/2002 of the European Parliament and of the Council<sup>(a)</sup> 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.

### **Enforcement**

**8.**—(1) The Agency must enforce the European poultrymeat provisions at slaughterhouses and approved cutting plants.

(2) Subject to paragraphs (3) and (4), a food authority must enforce the European poultrymeat provisions in its area other than at slaughterhouses and approved cutting plants.

(3) A food authority must enforce the European Poultrymeat provisions in its area in relation to poultrymeat imported from a third country.

(4) The record keeping requirements in Article 12(2), (3) and (4) of the Commission Regulation must be enforced by the Scottish Ministers.

(5) In this regulation an “approved cutting plant” has the meaning given to it in paragraph 1(17) of Annex I to Regulation (EC) No 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin<sup>(b)</sup>, and is an establishment that is—

- (a) approved or conditionally approved as such by the Agency under Article 31(2) of Regulation (EC) No 882/2004 of the European Parliament and of the Council on controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules<sup>(c)</sup>; or
- (b) operating as such under Article 4(5) of Regulation (EC) No 853/2004, pending such approval.

### **Duty to give assistance and provide information**

**9.** Each enforcement authority must give such assistance and information to any other enforcement authority as that authority may reasonably require for the purpose of helping that authority perform its duties under these Regulations.

### **Powers of entry**

**10.**—(1) An authorised officer may enter any premises at any reasonable hour for the purpose of ensuring that the provisions of these Regulations are being complied with.

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(a) OJ L 31, 1.2.2002 p.1, to which there are no amendments relevant to Article 3.

(b) OJ L 139, 30.4.2004, p.55, as last amended by Commission Regulation (EU) No 150/2011 (OJ L 46, 19.2.2011, p.14).

(c) OJ L 165, 30.4.2004, p.1, as last amended by Commission Regulation (EU) No 208/2011 (OJ L 58, 3.3.2011, p.29).

(2) The authorised officer may be accompanied by—

- (a) such other persons as the authorised officer considers necessary; and
- (b) any representative of the European Commission.

(3) An authorised officer must not exercise the powers under paragraph (1) or (2) except on the production, if so required, of a duly authenticated document showing the authorised officer's authority.

(4) In paragraph (1) the reference to premises is to be construed as not including premises used only as a private dwelling-house.

(5) If a sheriff or justice of the peace, on information in writing sworn on oath, is satisfied of the matters mentioned in paragraph (6), the sheriff or justice of the peace may grant a warrant permitting an authorised officer to enter any premises, if need be by reasonable force.

(6) The matters are that—

- (a) there are reasonable grounds for believing that Condition A or B is met; and
- (b) Condition C, D or E is met.

(7) Condition A is that on the premises there are items of the type mentioned in regulation 11(1)(a) or documents or records of the type mentioned in regulation 11(1)(d) and that their inspection is likely to disclose evidence of a contravention of these Regulations.

(8) Condition B is that a contravention of these Regulations has occurred, is occurring or is about to occur on the premises.

(9) Condition C is that admission by an authorised officer to the premises has been, or is likely to be, refused, and that the occupier has been informed (whether orally or in writing) that a warrant may be applied for.

(10) Condition D is that admission by an authorised officer to the premises has been, or is likely to be, refused, and informing the occupier that a warrant under this regulation may be applied for may defeat the object of the entry.

(11) Condition E is that the premises are unoccupied or that the occupier is temporarily absent and it may defeat the object of the entry to await the occupier's return.

(12) A warrant granted under paragraph (5)—

- (a) is valid for one month, beginning with the day on which it is granted; and
- (b) must be produced for inspection to the person (if there is one) who appears to the authorised officer to be the occupier, or the person in charge of the premises.

(13) An authorised officer who enters any premises that are unoccupied or where the occupier is temporarily absent must leave the premises as effectively secured against unauthorised entry as when the authorised officer found them.

### **Powers of an authorised officer**

**11.**—(1) An authorised officer entering premises under regulation 10 may—

- (a) inspect the premises, and any plant, machinery or equipment on those premises, and any of the following found on those premises—
  - (i) any meat that the authorised officer has reasonable grounds for believing is poultrymeat, (including giblets and any packaging in which the meat is found);
  - (ii) any empty container;
  - (iii) any label;
  - (iv) any packaging; and
  - (v) any live poultry (within the meaning given to it in Part XX of Annex I to the Single CMO Regulation);
- (b) search the premises;
- (c) carry out any inquiries, examinations or tests;

- (d) have access to, and inspect and copy, any documents or records (in whatever form they are held) relating to matters covered by these Regulations, and remove them to enable them to be copied;
- (e) have access to, and inspect and check the data on, and operation of, any computer equipment that is, or has been in use in connection with, the documents or records mentioned in sub-paragraph (d), including data relating to deleted files and activity logs; and for this purpose the authorised officer may require any person having charge of, or otherwise concerned with the operation of, the computer equipment to afford to the authorised officer such assistance (including the provision of passwords) as the authorised officer may reasonably require, and, during the course of the checks, the authorised officer may recover data held on the computer equipment; and
- (f) where a document or record mentioned in sub-paragraph (d) is kept by means of a computer, require the record to be produced in a form in which it may be taken away.

(2) The authorised officer may direct a person appearing to the authorised officer to be in charge of the items or premises mentioned below that the following must be left undisturbed for as long as is reasonably necessary for the purpose of any examination or investigation—

- (a) any one or more of the items mentioned in paragraph (1)(a)(i) to (v); and
- (b) any premises on or in which any of those items are found.

(3) Where the authorised officer gives a person a direction under paragraph (2) those items which are the subject of the direction must be kept on the premises at that person's expense.

(4) The authorised officer may seize and detain any item of the type mentioned in paragraph (1)(a)(i) to (iv) or document or record mentioned in paragraph (1)(d) that the authorised officer has reason to believe may be required as evidence in proceedings under these Regulations.

(5) The authorised officer may seize as liable to destruction any item of the type mentioned in paragraph (1)(a)(i) to (iv) that the authorised officer reasonably believes contravenes any provision of these Regulations.

(6) The authorised officer may seize any computer equipment for the purpose of copying documents or records of the type mentioned in paragraph (1)(d), and for checking the data on, and operation of, any computer equipment that is, or has been, in use in connection with those documents or records (and in doing so may recover data), provided the equipment is returned as soon as practicable and, in any event, within 14 days, beginning with the day on which the equipment is seized.

(7) If the authorised officer is not able to remove an item or computer equipment seized under paragraph (4), (5) or (6) immediately, the authorised officer may—

- (a) mark it in any way that the authorised officer sees fit; and
- (b) give the person appearing to the authorised officer to be in charge of the item or computer equipment a notice (“a regulation 11(7) notice”)—
  - (i) identifying it;
  - (ii) requiring the item or computer equipment to be left undisturbed until it is collected by the authorised officer; and
  - (iii) prohibiting the removal of the item or computer equipment from the premises on which it was found until it is collected by the authorised officer.

(8) Where, in accordance with Article 8 of the Commission Regulation, the authorised officer has checked a batch of poultrymeat and is satisfied that it does not comply with the requirements of Article 1, 3 or 7 of the Commission Regulation, the authorised officer may direct any person appearing to the authorised officer to be in charge of the batch or premises not to market or import that batch until such time as proof has been produced to the relevant enforcement authority that it has been made to comply with those requirements.

(9) The authorised officer may give such directions as the authorised officer thinks appropriate in relation to a batch of poultrymeat to which paragraph (10) applies—

- (a) to prevent it being marketed in the European Union until the packaging has been marked, under supervision, in the manner mentioned in the first sub-paragraph of Article 16(6) of the Commission Regulation; or
- (b) to ensure that it is exported to a third country.

(10) This paragraph applies to—

- (a) a batch of frozen or quick-frozen chickens that is deemed, after counter-analysis, not to comply with Article 15(1) of the Commission Regulation;
- (b) an imported batch of frozen or quick-frozen chickens that is found not to comply with Article 15(1) of the Commission Regulation;
- (c) a batch of fresh, frozen or quick-frozen poultry cuts that is deemed, after counter-analysis, not to comply with Article 20(1) of the Commission Regulation; and
- (d) an imported batch of fresh, frozen or quick-frozen poultry cuts that is found not to comply with Article 20(1) of the Commission Regulation.

(11) The authorised officer must not exercise any power under this regulation, or give a direction under this regulation, except on the production, if so required, of a duly authenticated document showing the authorised officer's authority.

(12) An authorised officer may carry out an inspection at the request of another Member State or the European Commission.

### **Procedure on seizure**

**12.—**(1) An authorised officer must follow the procedures set out in this regulation if the authorised officer seizes anything under regulation 11(4), (5) or (6).

(2) The authorised officer must give to the person appearing to the authorised officer to be in charge of the premises from which the item or computer equipment was seized (“the premises”) a notice that must state—

- (a) what the authorised officer has seized;
- (b) when the authorised officer seized it;
- (c) the grounds for the seizure of the item or computer equipment; and
- (d) the address to which, and the period during which, a claim may be made for the return of the item or computer equipment.

(3) But where the premises are unoccupied, or no one appears to the authorised officer to be in charge of the premises, the authorised officer must attach a notice to a conspicuous part of the premises containing the information mentioned in sub-paragraphs (a) to (d) of paragraph (2).

(4) A person having a proprietary interest in the seized item, document or record or computer equipment (including a creditor who has a debt secured on the item or computer equipment) may notify the authorised officer of any claim that the seized item, document or record, or computer equipment was not liable to seizure, setting out the grounds for the claim in full.

(5) The claim must be made within 14 days of the seizure, beginning on the day on which the seized item or computer equipment was seized, to the address specified in the seizure notice.

(6) If a notification of a claim is not received within 14 days in respect of an item seized under regulation 11(4), the enforcement authority may retain the seized item for as long as necessary while it is being held for the purpose of any criminal investigation or proceedings or for use as evidence at a trial.

(7) If a notification of a claim is received within 14 days in respect of an item seized under regulation 11(4), the enforcement authority must—

- (a) return the seized item within 7 days, beginning with the day on which the claim is received; or



- (b) retain the seized item for as long as necessary while it is being held for the purpose of any criminal investigation or proceedings, or for use as evidence at a trial, but it must notify the claimant that the seized item is being retained, and of the reason why it is being retained within 28 days, beginning with the day on which the claim is received.

(8) If a notification of a claim is not received within 14 days in respect of an item seized under regulation 11(5), the enforcement authority may—

- (a) if a decision is taken by the enforcement authority not to destroy the seized item but to retain it for the purpose of any criminal investigation or proceedings, or for use as evidence at a trial, retain the seized item for as long as necessary for one of those purposes, but the enforcement authority must—
  - (i) notify the relevant person that the seized item is being retained, and of the reason why it is being retained, within 14 days of the expiry of the claim period, beginning with the day after the claim period expires; or
  - (ii) where the enforcement authority does not know who the relevant person is, and this cannot be ascertained after reasonable enquiries have been made by the enforcement authority, attach a notice to a conspicuous part of the premises, or a conspicuous object on those premises, within 14 days of the expiry of the claim period, beginning with the day after the claim period expires, stating that the seized item is being retained, and the reason why it is being retained; or
- (b) destroy the seized item within 14 days, beginning with the day after the 14 day claim period expires, but the enforcement authority must—
  - (i) notify the relevant person that the seized item has been destroyed within 14 days of its destruction, beginning with the day on which the item is destroyed (or the last day of destruction where the destruction of the item takes place on more than one day); or
  - (ii) where the enforcement authority does not know who the relevant person is, and this cannot be ascertained after reasonable enquiries have been made by the enforcement authority, attach a notice to a conspicuous part of the premises, or to a conspicuous object on those premises, within 14 days of the destruction of the item, beginning with the day on which the item is destroyed (or the last day of destruction where the destruction of the item takes place on more than one day) stating that the seized item has been destroyed.

(9) In paragraph (8) the “relevant person” means—

- (a) if the enforcement authority knows the identity of a person with a proprietary interest in the seized item, that person or, where the enforcement authority knows the identity of more than one person with a proprietary interest in the seized item, each of those persons; or
- (b) if the enforcement authority does not know the identity of a person with a proprietary interest in the seized item, the person appearing to the enforcement authority to be in charge of the premises.

(10) In the case of any item destroyed under paragraph (8)(b), the enforcement authority may recover the following costs as a debt from any person who had a proprietary interest in the item immediately before its destruction (apart from a creditor who has a debt secured on the item)—

- (a) the costs of the removal and transport of the item from the premises to the place at which it is stored;
- (b) the costs of the storage of the item for up to 14 days;
- (c) any costs for the removal and transport of the item if it is moved from one place of storage to another place of storage;
- (d) the costs of the transport of the item from the place of storage to the place of destruction; and
- (e) the costs of the destruction of the item.

(11) If a notification of a claim is received within 14 days in respect of an item seized under regulation 11(5), the enforcement authority must—

- (a) return the seized item within 7 days, beginning with the day on which the claim is received;
- (b) if a decision is taken by the enforcement authority not to destroy the seized item but to retain it for the purpose of any criminal investigation or proceedings or for use as evidence at a trial, retain the item for as long as necessary for one of those purposes but the enforcement authority must notify the claimant that the seized item is being retained, and of the reason why it is being retained, within 7 days of the claim, beginning with the day on which the claim is received; or
- (c) within 14 days of the claim, beginning with the day on which the claim is received, initiate proceedings (“regulation 12(11)(c) proceedings”) before a sheriff for an order granting authority to destroy the item.

(12) In regulation 12(11)(c) proceedings the sheriff may—

- (a) authorise the enforcement authority to destroy the seized item; or
- (b) authorise the enforcement authority to retain the item for the purpose of any criminal investigation or proceedings, or for use as evidence at a trial, for as long as necessary for one of those purposes; or
- (c) refuse to authorise destruction and require the enforcement authority to return the item to the claimant and impose a deadline by which this must be done.

(13) If, in regulation 12(11)(c) proceedings, the sheriff authorises the enforcement authority to destroy the seized item, the sheriff may also make an order requiring the claimant (but not a claimant who is a creditor with a debt secured on the item) to pay such of the costs listed in paragraph (10) as the sheriff may specify.

(14) Where a person with a proprietary interest in an item seized under regulation 11(5) does not intend to make a claim under paragraph (4), that person may notify the enforcement authority of this in writing, and the enforcement authority may proceed in one of the ways specified in paragraph (8) without waiting for the 14 day claim period to expire upon receiving—

- (a) written confirmation from that person that—
  - (i) no one else has a proprietary interest in that item; or
  - (ii) all those with a proprietary interest in the item are content for the enforcement authority to proceed without waiting for the 14 day claim period to expire; and
- (b) a written indemnity from that person against any claim made by another person with a proprietary interest in the item arising as a consequence of the enforcement authority proceeding without waiting for the 14 day claim period to expire.

(15) If a notification of a claim is received within 14 days in the case of any computer equipment seized under regulation 11(6), the enforcement authority must—

- (a) return the seized computer equipment within 7 days of the claim, beginning with the day on which the claim is received, or, if shorter, within the remainder of the maximum 14 day period specified in regulation 11(6); or
- (b) apply to the sheriff for an order authorising the enforcement authority to retain the seized computer for longer than the 14 day period specified in regulation 11(6) either—
  - (i) within 7 days of the claim, beginning on the day on which the claim is received; or
  - (ii) where the 7 day period in head (i) would exceed the maximum 14 day period specified in regulation 11(6), before the expiry of that maximum 14 day period.

(16) If, in the case of any computer equipment seized under regulation 11(6), the sheriff authorises the enforcement authority to retain the seized computer equipment, the sheriff may impose conditions as to the basis on which the equipment may continue to be retained, including the imposition of a deadline by which the equipment must be returned.

(17) An application to the sheriff under this regulation is by way of summary application.

(18) A decision of the sheriff under this regulation is final.

### **Compliance notices**

**13.**—(1) If an authorised officer has reasonable grounds for believing that any person is contravening, or has contravened, a European poultrymeat provision, the authorised officer may, by notice (a “compliance notice”), require a person to take steps (or steps at least equivalent to them), within such period as the authorised officer may specify, to secure that the contravention does not continue or recur.

(2) A compliance notice must—

- (a) state the authorised officer’s grounds for the belief;
- (b) specify the matter that constitutes the contravention of the European poultrymeat provision;
- (c) specify the activities that must stop, or the steps that must be taken in order to comply with the European poultrymeat provision;
- (d) state the period within which an activity must stop, or steps specified in the notice, or steps at least equivalent to them, must be taken;
- (e) state the right of appeal to the sheriff conferred by regulation 14; and
- (f) state the period within which such an appeal must be brought.

### **Appeals against compliance notices**

**14.**—(1) Any person who is aggrieved about a compliance notice may appeal against that notice to a sheriff.

(2) The enforcement authority may be a party to an appeal under this regulation.

(3) An appeal under this regulation must be made by way of summary application and must be lodged with the sheriff clerk within the period of 28 days, beginning with the day on which the compliance notice is given.

(4) On good cause being shown, the sheriff may hear an appeal under this regulation notwithstanding that it was not lodged within the time mentioned in paragraph (3) above.

(5) The sheriff may suspend a compliance notice pending an appeal.

### **Powers of a sheriff on appeal**

**15.**—(1) For the purposes of an appeal under regulation 14, the sheriff may require the enforcement authority to give reasons for the compliance notice, and the enforcement authority must comply with such a requirement.

(2) The sheriff may uphold an appeal under regulation 14 only if the sheriff considers that the enforcement authority or authorised officer, in issuing the compliance notice—

- (a) erred in law;
- (b) based the issue of the compliance notice on any incorrect material fact;
- (c) acted contrary to natural justice; or
- (d) exercised their discretion in an unreasonable manner.

(3) In considering an appeal under regulation 14, the sheriff may hear evidence by or on behalf of any party to the appeal.

(4) On an appeal against a compliance notice, the sheriff may either cancel the compliance notice or confirm the notice with or without modification.

(5) The sheriff may include in the decision on an appeal under regulation 14 such order as to the expenses of the appeal as the sheriff thinks proper.

(6) The decision of the sheriff is final.

## **Obstruction**

**16.** A person commits an offence if that person—

- (a) intentionally obstructs an authorised officer acting in the execution of these Regulations;
- (b) fails without reasonable excuse to give to an authorised officer any assistance or information the officer may reasonably require for the performance of functions under these Regulations;
- (c) fails without reasonable excuse to comply with a direction given under regulation 11(2), (8) or (9);
- (d) fails without reasonable excuse to comply with a regulation 11(7) notice;
- (e) intentionally furnishes any false or misleading information to an authorised officer; or
- (f) fails without reasonable excuse to produce a document or record when required to do so by an authorised officer.

## **Criminal offences: penalty**

**17.** A person who commits an offence under regulation 3 or 16 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **Extended period for bringing prosecutions**

**18.—(1)** Proceedings for an offence under these Regulations may be commenced within the period of 6 months from the date on which evidence sufficient in the opinion of the procurator fiscal to warrant the proceedings came to the procurator fiscal's knowledge.

(2) But no such proceedings may be commenced by virtue of paragraph (1) more than 12 months after the commission of the offence.

(3) For the purposes of this regulation—

- (a) a certificate signed by or on behalf of the procurator fiscal and stating the date on which evidence sufficient in the opinion of the procurator fiscal to warrant the proceedings came to the procurator fiscal's knowledge is conclusive evidence of that fact; and
- (b) a certificate stating that matter and purporting to be so signed is deemed to be so signed unless the contrary is proved.

## **Offences by bodies corporate etc.**

**19.** Where—

- (a) an offence under these Regulations has been committed by a body corporate or a Scottish partnership or other unincorporated association; and
- (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to any neglect on the part of—
  - (i) a relevant individual; or
  - (ii) an individual purporting to act in the capacity of a relevant individual,

the individual as well as the body corporate, Scottish partnership or unincorporated association, commits the offence and is liable to be proceeded against and punished accordingly.

## **Giving of notices**

**20.—(1)** Any notice required or authorised to be given under these Regulations to any person must be given, in writing, to that person by—

- (a) delivering it to that person;
- (b) leaving it at that person's proper address;

- (c) sending it to that person by post at that address; or
- (d) subject to paragraph (7), sending it to that person by an electronic communication.

(2) The notice may be given to a body corporate, Scottish partnership or unincorporated association by being given to a relevant individual.

(3) For the purposes of this regulation and section 7 of the Interpretation Act 1978<sup>(a)</sup> (references to service by post) in its application to this regulation, the proper address of any person to whom a notice is to be given is—

- (a) in the case of a body corporate, the address of the registered or principal office of the body;
- (b) in the case of a Scottish partnership or other unincorporated association, the address of the principal office of the partnership or association;
- (c) in the case of a relevant individual to whom the notice is given under paragraph (2), the proper address of the body corporate, Scottish partnership or other unincorporated association in question; and
- (d) in any other case, the last known address of the person in question.

(4) For the purposes of paragraph (3) the references to the “principal office” in relation to a body corporate which is registered outside the United Kingdom, a partnership which is carrying on business outside the United Kingdom or other unincorporated association which has its principal office outside the United Kingdom, include a reference, in each case, to that body’s or association’s principal office within the United Kingdom (if any).

(5) Paragraph (6) applies if a person to be given a notice under these Regulations has specified an address (the “specified address”) within the United Kingdom other than the person’s proper address, as determined in accordance with paragraph (3), as the one at which that person, or someone on that person’s behalf, will accept documents of the same description as a notice given under these Regulations.

(6) The specified address is also to be treated for the purposes of this regulation and section 7 of the Interpretation Act 1978 in its application to this regulation as the person’s proper address.

(7) If a notice under these Regulations to be given to a person is sent by an enforcement authority by electronic communication, it is to be treated as given only if—

- (a) the person to whom the notice is given has indicated a willingness to the enforcement authority to receive notices by an electronic communication and provided an address suitable for that purpose; and
- (b) the notice is sent to the address provided by that person.

(8) In this regulation “electronic communication” has the same meaning as in section 15(1) of the Electronic Communications Act 2000<sup>(b)</sup>.

### **Application of various provisions of the Food Safety Act 1990**

**21.—**(1) The following provisions of the Food Safety Act 1990<sup>(c)</sup> apply for the purposes of these Regulations with the modifications specified in paragraph (2)—

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21(1), (5) and (6) (defence of due diligence);
- (d) section 29 (procurement of samples);
- (e) section 30(8) (documentary evidence);
- (f) section 44 (protection of officers acting in good faith); and

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(a) 1978 c.30.

(b) 2000 c.7. Section 15 was amended by the Communications Act 2003 (c.21), Schedule 17, paragraph 158.

(c) 1990 c.16.

(g) section 46(1) (expenses of authorised officers).

(2) The modifications are—

- (a) construe any reference in the provisions specified in paragraph (1) to the Food Safety Act 1990 (or a Part or section of that Act) as a reference to these Regulations;
- (b) construe any reference in the provisions specified in paragraph (1) to an authorised officer, or an officer of an enforcement authority or food authority, as a reference to an authorised officer as defined in regulation 2(1) of these Regulations;
- (c) in relation to section 29—
  - (i) in paragraph (b)(ii), construe the reference to section 32 as a reference to these Regulations; and
  - (ii) in paragraph (d), omit “or of regulations or orders made under it”;
- (d) in relation to section 30(8)(a), omit “under subsection (6) above”; and
- (e) in relation to section 44(2), (3) and (4), construe any reference to a food authority as a reference to an enforcement authority.

### Consequential amendments

22. In Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 1990(a) (provisions to which those Regulations do not apply)—

- (a) for “The Poultry Meat (Water Content) (Scotland) Regulations 1983(b)” substitute “The Poultrymeat (Scotland) Regulations 2011(c)”; and
- (b) for “S.I. 1983/1372” substitute “S.S.I. 2011/318”.

### Revocations

23. The following are revoked—

- (a) the Poultry Meat (Water Content) (Scotland) Regulations 1983;
- (b) the Poultry Meat (Water Content) (Scotland) Amendment Regulations 1984(d); and
- (c) in the Food Safety Act 1990 (Consequential Modifications) (Scotland) Order 1990(e)—
  - (i) article 9; and
  - (ii) in Part 1 of Schedules 1 and 3 and Schedule 4, the reference to the Poultry Meat (Water Content) (Scotland) Regulations 1983.

*RICHARD LOCHHEAD*  
A member of the Scottish Executive

St Andrew’s House,  
Edinburgh  
7th September 2011

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(a) S.I. 1990/2463.  
(b) S.I. 1983/1372.  
(c) S.S.I. 2011/318.  
(d) S.I. 1984/1576.  
(e) S.I. 1990/2625.

SCHEDULE 1

Regulation 2(1)

EUROPEAN POULTRYMEAT PROVISIONS CONTRAVENTION OF WHICH IS AN OFFENCE

PART 1

PROVISIONS OF THE SINGLE CMO REGULATION

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Relevant provision of the Single CMO Regulation</i>	<i>Provisions to be read with the provisions of the Single CMO Regulation mentioned in column 1</i>	<i>Subject matter</i>
Article 113(3), first subparagraph, insofar as it relates to the marketing of poultrymeat	Article 116 of, and Part B of Annex XIV to, the Single CMO Regulation and the Commission Regulation	Prohibition on the marketing of poultrymeat except in accordance with the marketing standards laid down in Part B of Annex XIV to the Single CMO Regulation and the Commission Regulation.
Point III(1) of Part B of Annex XIV	Article 7 of the Commission Regulation	Quality grading.
Point III(2) of Part B of Annex XIV	Point II(2) of Part B of Annex XIV to the Single CMO Regulation in relation to fresh poultrymeat, Point II(3) of Part B of Annex XIV to the Single CMO Regulation in relation to frozen poultrymeat, Point II(4) of Part B of Annex XIV to the Single CMO Regulation in relation to quick-frozen poultrymeat Point II(6) of Part B of Annex XIV to the Single CMO Regulation in relation to fresh poultrymeat preparation	Marketing of poultrymeat and poultrymeat preparations in a fresh, frozen or quick-frozen condition.

**PART 2**  
**PROVISIONS OF THE COMMISSION REGULATION**

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Relevant provision of the Commission Regulation</i>	<i>Provisions to be read with the provisions of the Commission Regulation mentioned in column 1</i>	<i>Subject matter</i>
Article 3(1)	Article 3(2), (3) and (4) of the Commission Regulation	Presentation of a poultry carcasses.
Article 3(4), first sub-paragraph	Article 3(1) of the Commission Regulation	Composition of giblets where a poultry carcase is presented for marketing with giblets.
Article 3(4), second sub-paragraph	Article 3(1) of the Commission Regulation	Labelling of a poultry carcase that is presented for marketing with giblets but the giblets do not include one or more of the heart, neck, gizzard or liver.
Article 3(5)	Points III(1) and (2) of Part B of Annex XIV to the Single CMO Regulation	Indications to be shown on certain commercial documents.
Article 4(1)	Articles 1 and 3(1) of, and Annex I to, the Commission Regulation	Names under which poultrymeat must be sold.
Article 4(2)	Articles 1(1) and (2) and 11 of the Commission Regulation	Requirement that supplemental terms do not mislead the consumer.
Article 5(1)	Articles 1 and 11 of the Commission Regulation	Restriction on the use of names to prevent confusion with the names in Article 1 of the Commission Regulation (relating to types and presentations of poultrymeat), and the indications provided for in Article 11 of the Commission Regulation (relating to types of farming method, age at slaughter and length of fattening period).
Article 5(2)	Article 5(3), (4) and (6) of the Commission Regulation, as read, in the case of Article 5(4), with Article 5(5) of that Regulation	Additional requirements relating to the labelling, presentation and advertising of poultrymeat intended for the final consumer.



<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Relevant provision of the Commission Regulation</i>	<i>Provisions to be read with the provisions of the Commission Regulation mentioned in column 1</i>	<i>Subject matter</i>
Article 6	Point II(3) of Part B of Annex XIV to the Single CMO Regulation	Temperature at which frozen poultrymeat must be stored and kept.
Article 7(1)	Point III(I) of Part B of Annex XIV to the Single CMO Regulation	Criteria to be applied when grading poultry carcasses and cuts into class A or B.
Article 7(2)	Article 7(1) of the Commission Regulation	Additional criteria for grading poultry carcasses and cuts as class A.
Article 10	Annex III to the Commission Regulation	Terms to describe the method by which poultrymeat has been chilled.
Article 11(1), first sub-paragraph	The second sub-paragraph of Article 11(1) of, and Annexes IV and V to, the Commission Regulation	Terms to describe particular types of farming method.
Article 11(1), third sub-paragraph	The first sub-paragraph of Article 11(1) of the Commission Regulation	Foie gras indication.
Article 11(2)	Article 1(1)(a), fourth indent and 11(1) of, and Annex V(b), (c) or (d) to, the Commission Regulation	Use of indications relating to age at slaughter and length of fattening period.
Article 12(1)	Article 11 of the Commission Regulation	Registration of producers and slaughterhouses using the special marketing terms mentioned in Article 11(1) relating to farming methods and related record-keeping obligation on slaughterhouses.
Article 12(2)	Article 12(1) of the Commission Regulation	Record-keeping by producers using the special marketing terms mentioned in Article 11(1) relating to farming methods.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Relevant provision of the Commission Regulation</i>	<i>Provisions to be read with the provisions of the Commission Regulation mentioned in column 1</i>	<i>Subject matter</i>
Article 12(3)	Article 11(1)(a) of the Commission Regulation	Record-keeping by feed manufacturers and suppliers in respect of the composition of feed supplied to producers who are producing birds that will be marketed using the special marketing term relating to feed (fed with ....% ....).
Article 12(4)	Article 1(1)(d) and (e) of the Commission Regulation	Record-keeping by hatcheries supplying slow growing strains of birds to producers of “traditional free range” and “free-range – total freedom” birds.
Article 14, first sub-paragraph	Article 10 and 11 of the Commission Regulation	Prohibition on imported poultrymeat bearing certain optional indications relating to method of chilling or certain types of farming unless accompanied by an official certificate.
Article 15(1)	Annexes VI and VII to the Commission Regulation	Prohibition on the marketing of frozen and quick-frozen chickens where the water content exceeds technically unavoidable values.
Article 16(1), first sub-paragraph	Annexes VI and IX to the Commission Regulation	Water content checks on carcasses.
Article 16(1), second sub-paragraph	Annexes VI and XI to the Commission Regulation	Making the necessary technical adjustments when water content is above the permitted level.
Article 16(2)	Article 15(1) of, and Annexes VI and VII to, the Commission Regulation	Water content checks on frozen and quick-frozen chickens.
Article 16(3)	Article 16(1) and (2) of, and Annexes VI, VII and IX to, the Commission Regulation	Increased frequency of water content checks on frozen and quick-frozen chickens.
Article 16(4)	Article 16(1) and (2) of, and Annexes VI to IX to, the Commission Regulation	Water content checks on air chilled chicken carcasses.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Relevant provision of the Commission Regulation</i>	<i>Provisions to be read with the provisions of the Commission Regulation mentioned in column 1</i>	<i>Subject matter</i>
Article 16(6)	Annex X to the Commission Regulation	Marketing of frozen and quick-frozen chickens under supervision where the water content exceeds technically unavoidable values.
Article 20(1)	Annex VIII to the Commission Regulation	Prohibition on the marketing of certain poultry cuts if the water content exceeds technically unavoidable values.
Article 20(2)(a)	Article 16(1) and 20(1) of, and Annex IX to, the Commission Regulation	Water content checks at slaughterhouses on chicken and turkey carcasses intended for use in poultry cuts.
Article 20(2), second subparagraph	Article 20(2)(a) and (3) of, and Annexes VI to IX to, the Commission Regulation	Water content checks on air chilled poultry cuts.
Article 20(3)	Article 20(1) of, and Annex VIII to, the Commission Regulation	Water content checks at cutting plants on poultry cuts.
Article 20(4) in so far as it applies Article 16(3) of the Commission Regulation	Articles 16(1) and (2) of, and Annexes VI, VII and IX to, the Commission Regulation	Increased frequency of water content checks on poultry cuts.
Article 20(4) in so far as it applies to Article 16(4) of the Commission Regulation	Articles 16(1) and (2) of, and Annexes VI to IX to, the Commission Regulation	Water content checks on air chilled poultry cuts.
Article 20(4) in so far as it applies Article 16(6) of the Commission Regulation	Annex X to the Commission Regulation	Marketing of certain poultry cuts under supervision where the water content exceeds technically unavoidable values.

## SCHEDULE 2

Regulation 7(3)

### FEEES FOR WATER CONTENT CHECKS

**1.** In this Schedule—

“Article 16(1) water content check” means a check of the type mentioned in the first sub-paragraph of Article 16(1) of the Commission Regulation;

“Article 16(2) water content check” means a check of the type mentioned in Article 16(2) of the Commission Regulation;

“Article 16(3) water content check” means a check of the type mentioned in the second sub-paragraph of Article 16(3) of the Commission Regulation;

“Article 20(2) water content check” means a check of the type mentioned in paragraph (a) of the first sub-paragraph of Article 20(2) of the Commission Regulation;

“Article 20(3) water content check” means a check of the type mentioned in Article 20(3) of the Commission Regulation; and

“Article 20(4) water content check” means a check of the type mentioned in second sub-paragraph of Article 16(3) of the Commission Regulation, as applying to poultry cuts by virtue of Article 20(4) of that Regulation.

**2.** The following table sets out the fees payable in respect of water content checks carried out by the Agency or food authority—

<i>Check</i>	<i>Fee (£)</i>
Article 16(1) water content check	42
Article 16(2) water content check	297.02
Article 16(3) water content check	297.02
Article 20(2) water content check	42
Article 20(3) water content check	207.02
Article 20(4) water content check	207.02

**3.** All fees payable under this Schedule are payable to the Agency or food authority within 28 days of the Agency or food authority giving an operator an invoice demanding the payment of the fee, beginning with the day on which the invoice is received.

## EXPLANATORY NOTE

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

These Regulations make provision for the enforcement and execution of directly applicable European marketing standards relating to poultrymeat.

These Regulations revoke the Poultry Meat (Water Content) (Scotland) Regulations 1983 (S.I. 1983/1372), the Poultry Meat (Water Content) (Scotland) Amendment Regulations 1984 (S.I. 1984/1576) and parts of the Food Safety Act 1990 (Consequential Modifications) (Scotland) Order 1990 (S.I. 1990/2625). They also make consequential amendment to the Food Safety (Sampling and Qualifications) Regulations 1990 (S.I. 1990/2463).

They make the failure to comply with the provisions of Council Regulation (EC) No 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation) (OJ L 299 16.11.2007, p.1) (“the Single CMO Regulation”) and Commission Regulation (EC) No 543/2008 (OJ L 157 17.6.2008, p.46) mentioned in Schedule 1 (provisions relating to the marketing of poultrymeat) an offence (regulation 3 and Schedule 1).

They make provision in relation to the registration of slaughterhouses and producers as required by Article 12 of Commission Regulation (EC) No 543/2008 (regulation 4) and provide for appeals against a decision to refuse such a registration and a decision to cancel such a registration (regulations 5 and 6).

They provide for the payment of fees in relation to water content checks carried out by the Food Standards Agency or food authority (regulation 7 and Schedule 2).

They provide for enforcement (regulations 8 and 9). They confer powers of entry (regulation 10) and other powers including seizure and destruction powers (regulations 11 and 12). There is also provision for the issue of a compliance notice by an authorised officer (regulation 13) and for an appeal against compliance notices (regulations 14 and 15).

They make obstruction of an authorised officer an offence (regulation 16) and offences under these Regulations are punishable on summary conviction by a fine not exceeding level 5 on the standard scale (regulation 17). They provide for an extended period for bringing prosecutions (regulation 18), and for offences by bodies corporate (regulation 19). There is a notice provision (regulation 20) and various provisions of the Food Safety Act 1990 are applied (regulation 21).

A Business and Regulatory Impact Assessment has been prepared. Copies may be obtained from the Scottish Government, Rural and Environmental Directorate, B1 Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD and online at [www.legislation.gov.uk](http://www.legislation.gov.uk). Copies have been placed in the Scottish Parliament Information Centre.

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SCOTTISH STATUTORY INSTRUMENTS

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**2011 No. 318**

**FOOD**

The Poultrymeat (Scotland) Regulations 2011

£5.75

S5203 09/2011 315203T 19585

ISBN 978-0-11-101460-8



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