
SCOTTISH STATUTORY INSTRUMENTS

2017 No. 415

The Novel Foods (Scotland) Regulations 2017

Application of various provisions of the Act

5.—(1) The following provisions of the Act apply for the purpose of these Regulations with the modification that any reference in those provisions to the Act or Part of it is to be construed as a reference to these Regulations and any reference to an enforcement authority is to be construed as a reference to a food authority—

- (a) section 2 (extended meaning of sale etc);
- (b) section 20 (offences due to the fault of another person);
- (c) section 21 (defence of due diligence);
- (d) section 22 (defence of publication in the course of business);
- (e) section 32 (powers of entry);
- (f) section 36 (offences by bodies corporate);
- (g) section 36A (offences by Scottish partnerships);
- (h) section 44 (protection of officers acting in good faith);
- (i) section 49 (form and authentication of documents); and
- (j) section 50 (service of documents).

(2) Section 9 of the Act (inspection and seizure of suspected food) applies for the purposes of these Regulations as if it read as follows—

“(1) An authorised officer of a food authority may at all reasonable times inspect any food for human consumption which—

- (a) has been sold or is offered or exposed for sale;
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or preparation for sale; or
- (c) is otherwise placed on the market within the meaning of Regulation (EC) 178/2002.

and subsections (2) to (8) below shall apply where, on such an inspection or otherwise, it appears to the authorised officer that Article 6(2) of Regulation (EU) 2015/2283 is being, or has been, contravened in relation to any novel food.

(2) The authorised officer may either—

- (a) give notice to the person in charge of the novel food that, until the notice is withdrawn, the novel food—
 - (i) is not to be used for human consumption; and
 - (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or
- (b) seize the novel food and remove it in order to have it dealt with by a sheriff;

and any person who knowingly contravenes the requirements of a notice under paragraph (a) above is guilty of an offence.

(3) Where the authorised officer exercises the powers conferred by subsection (2)(a) above, the authorised officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not they are satisfied that the food complies with Article 6(2) of Regulation (EU) 2015/2283 and—

- (a) if so satisfied, immediately withdraw the notice;
- (b) if not so satisfied, seize the novel food and remove it in order to have it dealt with by a sheriff.

(4) Where an authorised officer exercises the powers conferred by subsection (2)(b) or (3)(b) above, the authorised officer shall inform the person in charge of the novel food that it is to be dealt with by a sheriff and any person who might be liable to a prosecution in respect of the novel food shall, if attending before the sheriff by whom the food falls to be dealt with, be entitled to be heard and to call witnesses.

(5) If it appears to a sheriff, on the basis of such evidence as the sheriff considers appropriate in the circumstances, that any novel food falling to be dealt with under this section is not on the Union list of authorised novel foods as established by Article 6 of Regulation (EU) 2015/2283, the sheriff shall condemn the novel food and order—

- (a) the novel food to be destroyed or to be so disposed of as to prevent it from being used for human consumption; and
- (b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the novel food.

(6) Any order made under subsection (5) shall be sufficient evidence in any proceedings under this Act of a contravention of Article 6(2) of Regulation (EU) 2015/2283.

(7) If a notice under subsection (2)(a) above is withdrawn, or the sheriff by whom any novel food falls to be dealt with under this section refuses to condemn it, the food authority shall compensate the owner of the novel food for any depreciation in its value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under subsection (7) above shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.”