

POLICY NOTE

THE FOOD (SCOTLAND) ACT 2015 (COMPLIANCE NOTICES) REGULATIONS 2023

SSI 2023/161

1. Description

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 49(1) and (2)(c) and 52 of the Food (Scotland) Act 2015 and all other powers enabling them to do so. This instrument is subject to the negative procedure.

2. Policy Objective

The main purpose of The Food (Scotland) Act 2015 (Compliance Notices) Regulations 2023 is to list offences in relation to which Compliance Notices, as set out in the Food (Scotland) Act 2015, may be used as an alternative to criminal proceedings. The relevant offences relate to food information, food composition standards, novel foods, foods for specific groups and food contact materials.

3. Policy Background

Part 3 of the Food (Scotland) Act 2015 makes provision for the use of Compliance Notices as an alternative to criminal proceedings in relation to relevant offences. Currently, under food law, in relation to the offences listed in the instrument, authorised officers (AOs) can seize and detain certain food products or report the offence to the Procurator Fiscal. There is a gap in enforcement powers in relation to less serious, technical breaches of the law, which could be dealt with effectively in an alternative way. Being able to issue Compliance Notices to food business operators would allow AOs to take a flexible, graduated and proportionate approach to enforcing breaches of relevant food law.

The introduction of Compliance Notices in relation to addressing breaches of relevant food law regulations that are listed in the instrument will provide AOs with a similar enforcement tool to those available in relation to food hygiene requirements. This will allow AOs to apply the same flexible, graduated and proportionate approach to a broader range of food law offences.

The offences in relation to which Compliance Notices will be available are in the following regulations: Quick-frozen Foodstuffs Regulations 1990, Food (Lot Marking) Regulations 1996, Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997, Bread and Flour Regulations 1998, Coffee Extracts and Chicory Extracts (Scotland) Regulations 2001, Kava-kava in Food (Scotland) Regulations 2002, Food Supplements (Scotland) Regulations 2003, Cocoa and Chocolate Products (Scotland) Regulations 2003, Condensed Milk and Dried Milk (Scotland) Regulations 2003, Specified Sugar Products (Scotland) Regulations 2003, Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004, Jam and Similar Products (Scotland) Regulations 2004, Genetically Modified Food (Scotland) Regulations 2004, General Food Regulations 2004, Tryptophan in Food (Scotland) Regulations 2005, Addition of Vitamins, Minerals and Other Substances (Scotland) Regulations 2007, Nutrition and Health Claims (Scotland) Regulations 2007, Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007, Specified Products from China (Restriction on

First Placing on the Market) (Scotland) Regulations 2008, Food Irradiation (Scotland) Regulations 2009, Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Regulations 2009, Plastic Kitchenware (Conditions on Imports from China) (Scotland) Regulations 2011, Materials and Articles in Contact with Food (Scotland) Regulations 2012, Fish Labelling (Scotland) Regulations 2013, Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013, Fruit Juices and Fruit Nectars (Scotland) Regulations 2013, Products Containing Meat etc. (Scotland) Regulations 2014, Food Information (Scotland) Regulations 2014, Honey (Scotland) Regulations 2015, Country of Origin of Certain Meats (Scotland) Regulations 2016, Food for Specific Groups (Scotland) Regulations 2016, Caseins and Caseinates (Scotland) (No. 2) Regulations 2016, Novel Foods (Scotland) Regulations 2017 and Food for Specific Groups (Infant Formula and Follow-On Formula) (Scotland) Regulations 2020.

4. Consultation

A shortened eight-week public consultation was held from 21 October to 16 December 2021 on the proposal to introduce a new Compliance Notice for breaches of food standards. The main aims were to seek the views of food businesses, enforcement authorities, consumers and other stakeholders on the proposal to introduce a Compliance Notice for food standards. The consultation was also used to confirm whether the Compliance Notice would benefit AOs who enforce food law, whether they would help to improve business compliance and to gain an understanding of how they might impact food business and Local Authority resources. The consultation was sent out to all 32 Local Authorities and a wide range of bodies representing the food industry. A total of 20 responses were received.

Compliance Notices were welcomed by the majority of stakeholders with unanimous agreement across all respondents that there is a gap in current food standards enforcement and that a Compliance Notice is a sensible option for addressing this.

5. Other Administrations

These Regulations extend to Scotland only and follow a comprehensive review of food law legislation. In England, Wales and Northern Ireland, as individual pieces of food standards legislation have been reviewed and amendments considered necessary, improvement notices have been gradually introduced.

6. Guidance

A Guidance document will be developed to support AOs using Compliance Notices. This has been supported by training that was delivered to AOs in April and further training will be delivered by FSS following the introduction of the Compliance Notices.

7. Impact Assessment

A final Business and Regulatory Impact Assessment has been prepared following the public consultation and it accompanies this note.

8. Regulating small businesses

This Regulation will apply to all businesses who manufacture and sell food products.

9. Monitoring

Food Standards Scotland will work with Local Authorities where problems or suspected infringements of the legislation arise. The effectiveness of this instrument will be monitored via general feedback from industry, Enforcement Authorities and consumers.

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