

---

STATUTORY INSTRUMENTS

---

**1995 No. 1372**

**The Dairy Products (Hygiene) (Scotland) Regulations 1995**

**PART VIII**

**ENFORCEMENT, SUPERVISION AND PENALTIES**

**Enforcement and supervision**

**16.**—(1) These Regulations shall be enforced and executed by each food authority within its area.

(2) Each food authority shall carry out such inspection and supervision of those production holdings licensed or dairy establishments approved by it and any sampling, analysis and examination of any dairy products as that authority may consider necessary to ensure that the requirements of these Regulations are complied with.

**Information to be provided by food authorities**

**17.** Every food authority shall provide the Secretary of State with such information relating to the execution of its duties under these Regulations as he may from time to time require.

**Offences and penalties**

**18.**—(1) If—

- (a) any person (other than a food authority) contravenes or fails to comply with any of the provisions of these Regulations; or
- (b) the occupier of any production holding or dairy establishment fails to take all reasonable steps to secure the compliance by any person employed by him or any person admitted to that production holding or dairy establishment with any provision of these Regulations,

he shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) above shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding two years or to both.

(3) No prosecution for such an offence shall commence after the expiry of—

- (a) three years from the commission of the offence; or
- (b) one year from the date on which evidence sufficient in the opinion of the Procurator Fiscal to justify proceedings comes to his knowledge.

(4) For the purposes of paragraph (3) above—

- (a) proceedings shall be deemed to be commenced on the date on which a warrant to apprehend or cite the accused is granted provided such warrant is executed without undue delay; and

- (b) a certificate by the Procurator Fiscal as to the date on which such evidence came to his knowledge shall be conclusive evidence of that fact.

### **Authorisations to derogate**

- 19.** The food authority may authorise derogation from the requirements as to—
- (a) automatic sealing in the case of limited production specified in paragraph 2 of section A of Part II of Schedule 2 and paragraph 4 of Schedule 9, in accordance with paragraph (a) of Chapter V of Annex B and paragraph 3 of Chapter III of Annex C of Council Directive 92/46;
  - (b) equipment specified in paragraph 7(1) of section A of Part II of Schedule 2 in accordance with paragraph (f) of Chapter V of Annex B of Council Directive 92/46;
  - (c) times and temperatures specified in paragraph 1 of Part I of Schedule 5, in accordance with paragraph B(1) of Chapter I, Annex C of Council Directive 92/46;
  - (d) temperature for milk-based products specified in paragraph 2 of Schedule 7 and paragraph 1 of Part I of Schedule 8, in accordance with paragraph A(2) of Chapter III of Annex A of Council Directive 92/46.
  - (e) use of working areas, instruments and equipment specified in paragraph 4 of section A of Part III of Schedule 2, in accordance with paragraph A(3) of Chapter II, Annex B of Council Directive 92/46.

### **Application of various sections of the Act**

**20.—(1)** The following provisions of the Act shall apply for the purposes of these Regulations as they apply for the purposes of section 8, 14 or 15 of the Act and unless the context otherwise requires, any reference in them to the Act shall be construed as a reference to these Regulations:—

- (a) section 2 (extended meaning of “sale” etc.);
- (b) section 3 (presumptions that food intended for human consumption);
- (c) section 20 (offences due to fault of another person);
- (d) section 21 (defence of due diligence);
- (e) section 30(8) (which relates to documentary evidence);
- (f) section 33 (obstruction etc. of officers);
- (g) section 36 (offences by bodies corporate) subject to the modification that “body corporate” shall include a Scottish partnership and “director” a partner in such a partnership;
- (h) section 44 (protection of officers acting in good faith).

(2) Section 5(6) (appointment of a person who is not an officer) of the Act shall apply in relation to an appointment by a food authority for the purposes of these Regulations as it applies in relation to matters arising under the Act.

(3) Section 8(3) (which makes presumptions in the case of batches of food) of the Act shall apply to food which it is an offence to sell under these Regulations as it applies to food which fails to comply with food safety requirements.

(4) Section 9 (inspection and seizure of suspected food) of the Act shall apply to food which it is an offence to sell under these Regulations as it applies to food which fails to comply with food safety requirements.