
STATUTORY INSTRUMENTS

1995 No. 2200

The Food Safety (Temperature Control) Regulations 1995

PART I

General

Citation and commencement

1. These Regulations may be cited as the Food Safety (Temperature Control) Regulations 1995 and shall come into force on 15th September 1995.

Intepretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Food Safety Act 1990;

“the Directive” means Council Directive [93/43/EEC](#) of 14th June 1993 on the hygiene of foodstuffs⁽¹⁾;

“food authority” does not include—

(a) the council of a non-metropolitan county in England or Wales, unless that council is a unitary authority; or

(b) as respects the Inner Temple or the Middle Temple, the appropriate Treasurer;

“food business” means any undertaking, whether carried on for profit or not and whether public or private, carrying out any or all of the following operations, namely, preparation, processing, manufacturing, packaging, storing, transportation, distribution, handling or offering for sale or supply of food;

“primary production” includes harvesting, slaughter and milking;

“recommended temperature” means a specified temperature which has been recommended in accordance with regulation 6(1)(a);

“shelf life” means—

(a) in relation to food with respect to which an indication of minimum durability is required in accordance with—

(i) regulation 21 of the Food Labelling Regulations 1984⁽²⁾(indication of minimum durability), or

(ii) regulation 21 of the Food Labelling (Scotland) Regulations 1984⁽³⁾(indication of minimum durability),

the period up to and including the date required to be included in that indication;

⁽¹⁾ OJ No. L 175, 19.7.93, p.1.

⁽²⁾ S.I.1984/1305; the relevant amending instrument is S.I. 1990/2488.

⁽³⁾ S.I. 1984/1519; the relevant amending instrument is S.I. 1990/2506.

- (b) in relation to food with respect to which a 'use by' date is assigned in the form required in accordance with—
 - (i) regulation 21A of the Food Labelling Regulations(4)(form of indication of 'use by' date), or
 - (ii) regulation 21A of the Food Labelling (Scotland) Regulations 1984(5)(form of indication of 'use by' date),
 the period up to and including that date;
- (c) in relation to food which is not required to bear an indication of minimum durability or a 'use by' date, the period for which the food can be expected to remain fit for sale if it is kept in a manner which is consistent with food safety;

“special storage conditions” shall be construed in accordance with regulation 6(d) of the Food Labelling Regulations 1984;

“ultimate consumer” means any person who buys otherwise than—

 - (a) for the purpose of resale;
 - (b) for the purposes of a catering establishment; or
 - (c) for the purposes of a manufacturing business;

“unitary authority” means—

 - (a) in England, any authority which is the sole principal council for its local government area;
 - (b) in Wales, a county or county borough council established under the Local Government (Wales) Act 1994(6).

(2) In determining for the purposes of these Regulations whether any matter involves a risk to food safety, regard shall be had to the nature of the food, the manner in which it is handled and packed, any process to which the food is subjected before supply to the consumer, and the conditions under which it is displayed or stored.

- (3) In these Regulations, unless the context otherwise requires, a reference—
 - (a) to a numbered Part is to the Part of these Regulations bearing that number;
 - (b) to a numbered regulation is to the regulation in these Regulations bearing that number;
 - (c) in a regulation to a numbered paragraph is to the paragraph of that regulation bearing that number; and
 - (d) in a paragraph to a lettered sub-paragraph is to the sub-paragraph in that paragraph bearing that letter.

Application of provisions of these Regulations

- 3.—(1) Subject to paragraph (3), regulations 4 to 16 shall apply to neither—
 - (a) primary production; nor
 - (b) a person carrying on any activity which is regulated by or under any of the Regulations listed in paragraph (2), but only with respect to the carrying on of that activity.
- (2) The Regulations referred to in paragraph (1)(b) are—
 - (a) the Food Safety (Fishery Products) (Derogations) Regulations 1992(7);

(4) The relevant amending instrument is S.I. [1990/2488](#).

(5) The relevant amending instrument is S.I. [1990/2506](#).

(6) [1994 c. 19](#).

(7) S.I. [1992/1507](#).

- (b) the Food Safety (Live Bivalve Molluscs) (Derogations) Regulations 1992(8);
 - (c) the Food Safety (Fishery Products) Regulations 1992(9);
 - (d) the Food Safety (Live Bivalve Molluscs and Other Shellfish) Regulations 1992(10);
 - (e) the Food Safety (Fishery Products on Fishing Vessels) Regulations 1992(11);
 - (f) the Egg Products Regulations 1993(12);
 - (g) the Meat Products (Hygiene) Regulations 1994(13);
 - (h) the Fresh Meat (Hygiene and Inspection) Regulations 1995(14);
 - (i) the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations 1995(15);
 - (j) the Dairy Products (Hygiene) Regulations 1995(16);
 - (k) the Dairy Products (Hygiene) (Scotland) Regulations 1995(17).
- (3) Notwithstanding paragraph (1)(b), the provisions of regulations 4 to 13 and 16 shall apply to a person carrying on any activity which is regulated by—
- (a) the Food Safety (Fishery Products) (Derogations) Regulations 1992;
 - (b) the Food Safety (Fishery Products) Regulations 1992;
 - (c) the Food Safety (Fishery Products on Fishing Vessels) Regulations 1992,
- unless, in the case of a particular product at a particular stage in its production, a provision in any of those Regulations imposes a further or alternative requirement in relation to the temperature at which that product is to be kept at that stage in its production.
- (4) Part II shall apply only to England and Wales, and Part III shall apply only to Scotland.

PART II

Temperature Control Requirements in England and Wales

Chill holding requirements

- 4.—(1) Subject to paragraph (2) and regulation 5, no person shall keep any food—
- (a) which is likely to support the growth of pathogenic micro-organisms or the formation of toxins; and
 - (b) with respect to which any commercial operation is being carried out, at or in food premises at a temperature above 8°C.
- (2) Paragraph (1) shall not apply to any food which, as part of a mail order transaction, is being conveyed by post or by a private or common carrier to an ultimate consumer.
- (3) Subject to regulation 5, no person shall supply by mail order any food which—

(8) S.I. 1992/1508.
(9) S.I. 1992/3163.
(10) S.I. 1992/3164.
(11) S.I. 1992/3165.
(12) S.I. 1993/1520.
(13) S.I. 1994/3082.
(14) S.I. 1995/539.
(15) S.I. 1995/540.
(16) S.I. 1995/1086.
(17) S.I. 1995/1372.

- (a) is likely to support the growth of pathogenic micro-organisms or the formation of toxins; and
 - (b) is being or has been conveyed by post or by a private or common carrier to an ultimate consumer,
- at a temperature which has given rise to or is likely to give rise to a risk to health.

General exemptions from the chill holding requirements

5. Regulation 4 shall not apply to—

- (a) food which—
 - (i) has been cooked or reheated,
 - (ii) is for service or on display for sale, and
 - (iii) needs to be kept hot in order to control the growth of pathogenic micro-organisms or the formation of toxins;
- (b) food which, for the duration of its shelf life, may be kept at ambient temperatures with no risk to health;
- (c) food which is being or has been subjected to a process such as dehydration or canning intended to prevent the growth of pathogenic micro-organisms at ambient temperatures, but this paragraph shall cease to apply in circumstances where—
 - (i) after or by virtue of that process the food was contained in a hermetically sealed container, and
 - (ii) that container has been opened;
- (d) food which must be ripened or matured at ambient temperatures, but this paragraph shall cease to apply once the process of ripening or maturation is completed;
- (e) raw food intended for further processing (which includes cooking) before human consumption, but only if that processing, if undertaken correctly, will render that food fit for human consumption;
- (f) food to which Council Regulation (EEC) No. 1906/90 on certain marketing standards for poultry, as amended⁽¹⁸⁾, applies;
- (g) food to which Council Regulation (EEC) No. 1907/90 on certain marketing standards for eggs, as amended⁽¹⁹⁾, applies.

Upward variation of the 8°C temperature by manufacturers etc.

6.—(1) In any proceedings for an offence of contravening regulation 4(1), it shall be a defence for a person charged (for the purposes of this regulation called “the defendant”) to prove that—

- (a) a food business responsible for manufacturing, preparing or processing the food has recommended that it is kept—
 - (i) at or below a specified temperature between 8°C and ambient temperatures, and
 - (ii) for a period not exceeding a specified shelf life;
- (b) that recommendation has, unless the defendant is that food business, been communicated to the defendant either by means of a label on the packaging of the food or by means of some other appropriate form of written instruction;

⁽¹⁸⁾ OJ No. L 173, 6.7.90, p.1; as amended by Council Regulation (EEC) No. 317/93 (OJ No. L 37, 18.2.93, p.8) and Council Regulation (EC) No. 3204/93 (OJ No. L 289, 24.11.93, p.3).

⁽¹⁹⁾ OJ No. L 173, 6.7.90, p.5; as amended by Council Regulation (EEC) No. 2617/93 (OJ No. L 240, 25.9.93, p.1) and Council Regulation (EC) No. 3117/94 (OJ No. L 330, 21.12.94, p.4).

- (c) the food was not kept by the defendant at a temperature above the specified temperature; and
 - (d) at the time of the commission of the alleged offence, the specified shelf life had not been exceeded.
- (2) A food business responsible for manufacturing, preparing or processing food shall not recommend that any food is kept—
- (a) at or below a specified temperature between 8°C and ambient temperatures; and
 - (b) for a period not exceeding a specified shelf life,
- unless that recommendation is supported by a well-founded scientific assessment of the safety of the food at the specified temperature.

Chill holding tolerance periods

- 7.—(1) In any proceedings for an offence of contravening regulation 4(1), it shall be a defence for a person charged to prove that the food—
- (a) was for service or on display for sale;
 - (b) had not previously been kept for service or on display for sale at a temperature above 8°C or, in appropriate circumstances, the recommended temperature; and
 - (c) had been kept for service or on display for sale for a period of less than four hours.
- (2) In any proceedings for an offence of contravening regulation 4(1), it shall be a defence for the person charged to prove that the food—
- (a) was being transferred—
 - (i) to a vehicle used for the purposes of the activities of a food business from, or
 - (ii) from a vehicle used for the purposes of the activities of a food business to, premises (which includes vehicles) at which the food was going to be kept at or at below 8°C or, in appropriate circumstances, the recommended temperature; or
 - (b) was kept at a temperature above 8°C or, in appropriate circumstances, the recommended temperature for an unavoidable reason, such as—
 - (i) to accommodate the practicalities of handling during and after processing or preparation,
 - (ii) the defrosting of equipment, or
 - (iii) temporary breakdown of equipment,
- and was kept at a temperature above 8°C or, in appropriate circumstances, the recommended temperature for a limited period only and that period was consistent with food safety.

Hot holding requirements

8. No person shall in the course of the activities of a food business keep any food which—
- (a) has been cooked or reheated;
 - (b) is for service or on display for sale; and
 - (c) needs to be kept hot in order to control the growth of pathogenic micro-organisms or the formation of toxins,
- at or in food premises at a temperature below 63°C.

Hot holding defences

9.—(1) In any proceedings for an offence of contravening regulation 8, it shall be a defence for a person charged to prove that—

- (a) a well-founded scientific assessment of the safety of the food at temperatures below 63°C has concluded that there is no risk to health if, after cooking or reheating, the food is held for service or on display for sale—
 - (i) at a holding temperature which is below 63°C, and
 - (ii) for a period not exceeding a specified period of time; and
- (b) at the time of the commission of the alleged offence, the food was held in a manner which is justified in the light of that scientific assessment.

(2) In any proceedings for an offence of contravening regulation 8, it shall be a defence for a person charged to prove that the food—

- (a) had been kept for service or on display for sale for a period of less than two hours; and
- (b) had not previously been kept for service or on display for sale by that person.

General requirement for food which is a risk to health

10.—(1) Subject to paragraph (2), no person shall in the course of the activities of a food business keep foodstuffs which are—

- (a) raw materials, ingredients, intermediate products or finished products; and
- (b) likely to support the growth of pathogenic micro-organisms or the formation of toxins, at temperatures which would result in a risk to health.

(2) Consistent with food safety, limited periods outside temperature control are permitted where necessary to accommodate the practicalities of handling during preparation, transport, storage, display and service of food.

(3) A person may contravene paragraph (1) notwithstanding that he complies with the requirements of regulations 4 and 8, and in particular the keeping of perishable foodstuffs at above a maximum storage temperature recommended in any special storage conditions for them may be in contravention of paragraph (1) notwithstanding that they are kept at a temperature of 8°C or below.

Cooling of food

11. A food business responsible for cooling any food which must, by virtue of this Part, be kept at a temperature below ambient temperatures shall cool that food as quickly as possible following—

- (a) the final heat processing stage; or
- (b) if no heat process is applied, the final preparation stage,

to the temperature at which, by virtue of this Part, it must be kept.

Guides to good hygiene practice

12. For the purposes of regulations 6(2) and 9(1), the presence of a scientific assessment of the safety of any food in a guide to good hygiene practice which has been—

- (a) forwarded by the Secretary of State to the Commission pursuant to article 5.5 of the Directive, unless the Secretary of State has announced that the guide no longer complies with article 3 of the Directive; or
- (b) developed in accordance with article 5.6 and 7 of the Directive and published in accordance with article 5.8 of the Directive,

shall, until the contrary is proved, be considered sufficient evidence that the scientific assessment in question is well-founded.

PART III

Temperature Control Requirements in Scotland

Chill and hot holding requirements

13.—(1) Subject to paragraph (2), no person shall keep food with respect to which any commercial operation is being carried out at or in food premises otherwise than—

- (a) in a refrigerator or refrigerating chamber or in a cool ventilated place; or
- (b) at a temperature above 63°C.

(2) Paragraph (1) shall not apply to any food—

- (a) which is undergoing preparation for sale;
- (b) which is exposed for sale or has been sold to a consumer whether for immediate consumption or otherwise;
- (c) which, immediately following any process of cooking to which it is subjected or the final processing stage if no cooking process is applied, is being cooled under hygienic conditions as quickly as possible to a temperature which would not result in a risk to health;
- (d) which, in order that it may be conveniently available for sale on the premises to consumers, it is reasonable to keep otherwise than as referred to in paragraph (1);
- (e) which, for the duration of its shelf life, may be kept at ambient temperatures with no risk to health;
- (f) to which Council Regulation (EEC) No. 1906/90 on certain marketing standards for poultry, as amended, applies;
- (g) to which Council Regulation (EEC) No. 1907/90 on certain marketing standards for eggs, as amended, applies.

Reheating of food

14.—(1) Food which in the course of a commercial operation has been heated and which is thereafter reheated before being served for immediate consumption or exposed for sale shall, on being reheated, be raised to a temperature of not less than 82°C.

(2) In any proceedings for an offence under paragraph (1), it shall be a defence for the person charged to prove that he could not have raised the food to a temperature of not less than 82°C without a deterioration of its qualities.

Treatment of gelatine

15.—(1) Gelatine intended for use in the preparation of bakers' confectionery filling, meat products or fish products in the course of the activities of a food business shall, immediately before use, be brought to the boil or brought to and kept at a temperature of not less than 71°C for 30 minutes.

(2) Any gelatine left over after the completion of the process shall, if not treated as waste, be cooled under hygienic conditions as quickly as is reasonably practicable and when cold shall be kept in a refrigerator or a refrigerating chamber or a cool ventilated place.

Food which is a risk to health

16.—(1) Subject to paragraphs (2) and (3), no person shall in the course of the activities of a food business keep any products which are—

- (a) raw materials, ingredients, intermediate products or finished products; and
- (b) likely to support the growth of pathogenic micro-organisms or the formation of toxins, at temperatures which would result in a risk to health.

(2) Consistent with food safety, limited periods outside temperature control are permitted where necessary to accommodate the practicalities of handling during preparation, transport, storage, display and service of food.

(3) Paragraph (1) shall not apply to any food which immediately following a final heat processing stage, or a final preparation stage if no heat process is applied, is being cooled as quickly as possible to a temperature which would not result in a risk to health.

PART IV

Penalties, Enforcement and Revocations

Offences and penalties

17.—(1) If any person contravenes regulation 4, 6(2), 8, 10, 11, 13, 14, 15 or 16, he shall be guilty of an offence against these Regulations.

- (2) Any person guilty of an offence against these Regulations shall be liable—
 - (a) on summary conviction, to a fine not exceeding the statutory maximum;
 - (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or both.

Application of provisions of the Act

18. The following provisions of the Act shall apply for the purposes of these Regulations as they apply for the purposes of sections 8, 14 and 15 of the Act, and unless the context otherwise requires, a reference in them to the Act shall for the purposes of these Regulations 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 34 (time limit for prosecutions);
- (h) section 36 (offences by body corporate), subject to the following modifications—
 - (i) after the words “body corporate”, at the three places where they occur in section 36(1) of the Act, there shall be inserted the words “or Scottish partnership”, and
 - (ii) for the word “secretary” there shall be substituted the words “secretary, partner”;
- (i) section 44 (protection of officers acting in good faith).

Enforcement and execution

- 19.**—(1) Each food authority shall enforce and execute these Regulations within its area.
- (2) In executing and enforcing these Regulations, a food authority shall—
- (a) ensure that food premises are inspected with a frequency which has regard to the risk associated with those premises; and
 - (b) without prejudice to regulation 12, give due consideration to whether the proprietor of a food business has acted in accordance with any relevant guide to good hygiene practice which has been—
 - (i) forwarded by the Secretary of State to the Commission pursuant to article 5.5 of the Directive, unless the Secretary of State has announced that it no longer complies with article 3 of the Directive, or
 - (ii) developed in accordance with article 5.6 and 7 of the Directive and published in accordance with article 5.8 of the Directive.

Revocations

20. The Regulations specified in column (1) of the Schedule to these Regulations are hereby revoked to the extent specified in column (3) of that Schedule.

22nd August 1995

Angela Browning
Parliamentary Secretary, Ministry of Agriculture,
Fisheries and Food

Signed by authority of the Secretary of State for Health

22nd August 1995

Baroness Cumberlege
Parliamentary Under Secretary of State,
Department of Health

22nd August 1995

Gwilym Jones
Parliamentary Under Secretary of State, Welsh
Office

22nd August 1995

The Earl of Lindsay
Parliamentary Under Secretary of State, Scottish
Office