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STATUTORY INSTRUMENTS

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**1995 No. 2200**

**The Food Safety (Temperature Control) Regulations 1995**

**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—
- (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(1), applies;
- (g) food to which Council Regulation (EEC) No. 1907/90 on certain marketing standards for eggs, as amended(2), 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;
- (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—

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(1) 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).

(2) 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).

- (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.