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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations revoke and re-enact with changes the Food Hygiene (England) Regulations 2005 (S.I.2005/2059).

2. The Food Hygiene (England) Regulations 2005 provided for the execution and enforcement in relation to England of certain Community instruments, referred to in those Regulations as “the Community Regulations”. The Community instruments in question are those specified in sub-paragraphs (a) to (c) of paragraph 4 below. By extending the definition of the phrase “the Community Regulations” in these Regulations to include the Community instruments specified in sub-paragraphs (d) and (e) of paragraph 4 below, these Regulations provide for the execution and enforcement in relation to England of all the Community instruments specified in that paragraph.

3. The Community instruments specified in paragraph 4 below are defined in Schedule 1. These Regulations update the definitions of the Community instruments specified in sub-paragraphs (a) to (c) of paragraph 4 below to take account of certain Commission Regulations that enter into force on and apply from 11th January 2006. The Commission Regulations amend those Community instruments or as the case may be affect the way that they are to be read.

4. The Community instruments are —

- (a) Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs (OJ No. L139, 30.4.2004, p.1; the revised text of this Regulation is now set out in a Corrigendum, OJ No. L226, 25.6.2004, p.3);
- (b) Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin (OJ No. L139, 30.4.2004, p.55; the revised text of this Regulation is now set out in a Corrigendum, OJ No. L226, 25.6.2004, p.22);
- (c) Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ No. L155, 30.4.2004, p.206; the revised text of this Regulation is now set out in a Corrigendum, OJ No. L226, 25.6.2004, p.83);
- (d) Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs (OJ No. L338, 22.12.2005, p.1); and
- (e) Commission Regulation (EC) No. 2075/2005 laying down specific rules on official controls for *Trichinella* in meat (OJ No. L338, 22.12.2005, p.60).

5. The other major changes made by these Regulations are that —

- (a) the previous enforcement arrangements are altered; and
- (b) the scope of Schedule 5 (direct supply by the producer of small quantities of meat from poultry or lagomorphs slaughtered on the farm) is extended in the light of Article 3 of Commission Regulation (EC) No. 2076/2005 laying down transitional arrangements for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004 (OJ No. L338, 22.12.2005, p.83).

6. These Regulations —

- (a) create certain presumptions that, for the purposes of these Regulations, specified food is intended for human consumption (*regulation 3*);

*Status: This is the original version (as it was originally made).*

- (b) provide that the Food Standards Agency is the competent authority for the purposes of the Community Regulations except where it has delegated competences as provided for in the Community Regulations (*regulation 4*);
- (c) make provision for the execution and enforcement of these Regulations and of the Community Regulations (*regulation 5*);
- (d) provide for the following enforcement measures to be available in respect of a food business operator —
  - (i) hygiene improvement notices (*regulation 6*),
  - (ii) hygiene prohibition orders (*regulation 7*),
  - (iii) hygiene emergency prohibition notices and orders (*regulation 8*), and
  - (iv) remedial action notices and detention notices (*regulation 9*);
- (e) provide that where the commission of an offence under these Regulations is due to the act or default of some other person that other person is guilty of the offence (*regulation 10*);
- (f) provide that in proceedings for an offence under these Regulations it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence (*regulation 11*);
- (g) provide for the procurement and analysis of samples (*regulations 12 and 13*);
- (h) provide powers of entry for authorised officers of an enforcement authority (*regulation 14*);
- (i) create the offence of obstructing an officer (*regulation 15*);
- (j) provide a time limit for bringing prosecutions (*regulation 16*);
- (k) provide that a person who contravenes or fails to comply with specified provisions of the Community Regulations is guilty of an offence (*regulation 17(1)*);
- (l) provide penalties for offences (*regulation 17(2) and (3)*);
- (m) provide that a person is considered not to have contravened or failed to comply with a specified provision of Regulation (EC) No. 852/2004 (requirement for bulk foodstuffs in liquid, granulate or powder form to be transported in receptacles and / or containers / tankers reserved for the transport of foodstuffs) provided the requirements of Schedule 3 are complied with (*regulation 17(4)*);
- (n) provide that where an offence under these Regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, an officer of the body corporate or a person purporting to act as such he as well as the body corporate is deemed to be guilty of that offence and may be proceeded against and punished accordingly (*regulation 18*);
- (o) provide that where an offence under these Regulations which has been committed by a Scottish partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner he as well as the partnership is deemed to be guilty of that offence and may be proceeded against and punished accordingly (*regulation 19*);
- (p) provide a right of appeal in respect of —
  - (i) the service of a hygiene improvement notice or a remedial action notice,
  - (ii) the refusal of an enforcement authority to issue a certificate under specified provisions to the effect that they are satisfied that a food business operator has taken measures to secure that the health risk condition is no longer fulfilled with respect to the food business concerned, and

- (iii) the making of a hygiene prohibition order or a hygiene emergency prohibition order (*regulations 20 to 22*);
- (q) provide for the application, for the purposes of these Regulations, of section 9 of the Food Safety Act 1990 (*1990 c. 16*), but with a specified modification (*regulation 23*);
- (r) provide for the issue to food authorities by the Secretary of State of codes of recommended practice (*regulation 24*);
- (s) provide for the protection of officers acting in good faith (*regulation 25*);
- (t) provide for the revocation or suspension of the designation or as the case may be appointment of specified officials (*regulation 26*);
- (u) provide that when an authorised officer of an enforcement authority has certified that any food has not been produced, processed or distributed in compliance with these Regulations and the Community Regulations, it shall be treated for the purposes of section 9 of the Food Safety Act 1990 as failing to comply with food safety requirements (*regulation 27*);
- (v) provide for the service of documents (*regulation 28*);
- (w) provide that the requirements set out in the following Schedules have effect —
  - (i) Schedule 3 (bulk transport in sea-going vessels of liquid oils or fats and the bulk transport by sea of raw sugar) (*regulation 29*),
  - (ii) Schedule 4 (temperature control requirements) (*regulation 30*),
  - (iii) Schedule 5 (direct supply by the producer of small quantities of meat from poultry or lagomorphs slaughtered on the farm) (*regulation 31*), and
  - (iv) Schedule 6 (restrictions on the sale of raw milk intended for direct human consumption) (*regulation 32*);
- (x) make consequential amendments to specified instruments (*regulation 33*); and
- (y) revoke the Food Hygiene (England) Regulations 2005 (S.I. *2005/2059*) (*regulation 34*).

7. A full Regulatory Impact Assessment on the effect that these Regulations will have on the costs of business has been prepared and placed in the Library of each House of Parliament. Copies may be obtained from the Food Hygiene Implementation Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.