
STATUTORY INSTRUMENTS

2012 No. 2619

**The Materials and Articles in Contact
with Food (England) Regulations 2012**

PART 9

Enforcement

Offences and penalties

[^{F1}19.—(1) Any person who contravenes [^{F2}regulation 10A(1)], 12(8) or 18(2) is guilty of an offence.

(2) Any person who fails to comply with a compliance notice served on them under regulation 19A is guilty of an offence.

(3) Any person who intentionally obstructs a person acting in the execution of Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 282/2008, Regulation 450/2009, Regulation 10/2011, Regulation 2018/213 or these Regulations is guilty of an offence.

(4) Any person who, without reasonable excuse, fails to provide any assistance or information a person may reasonably require for the performance of their functions under the Regulations mentioned in paragraph (3) is guilty of an offence.

(5) Any person who, in purported compliance with any requirement under paragraph (4), knowingly or recklessly supplies information that is false or misleading in any material particular is guilty of an offence.

(6) A person guilty of an offence is liable—

(a) in the case of an offence created by regulation 17B—

(i) on conviction on indictment to a fine or to a term of imprisonment not exceeding two years or both; or

(ii) on summary conviction to a fine or to a term of imprisonment not exceeding six months or both;

(b) in the case of an offence created by paragraphs (1), (2), (3), (4) or (5) of this regulation or by regulation 4(3), 5, 7(1), 14(1), 15B or 16(4) on summary conviction to a fine.

(7) Nothing in paragraph (3) or (4) is to be construed as requiring a person to answer any question or give any information if to do so might incriminate that person.]

F1 Reg. 19 substituted (25.12.2020) by [The Food and Feed Hygiene and Safety \(Miscellaneous Amendments\) \(England\) Regulations 2020 \(S.I. 2020/1410\)](#), regs. 1(2), **4(10)**

F2 Words in reg. 19(1) substituted (31.12.2020 immediately after IP completion day) by [The Food and Feed Hygiene and Safety \(Miscellaneous Amendments\) \(England\) Regulations 2020 \(S.I. 2020/1410\)](#), regs. 1(3), **4(19)**

[^{F3} Compliance notices

19A.—(1) If an authorised officer has reasonable grounds for believing that any person has not complied with, is not complying with, or is not likely to comply with a provision specified in regulation 19B (which provisions concern declarations of compliance with legislative requirements or supporting documentation), the officer may serve a compliance notice on that person.

(2) A compliance notice must state—

- (a) the reason for the service of the notice and the steps the person on whom the notice has been served must take;
- (b) the date and, if appropriate, the time by which each step must be taken;
- (d) that a failure to comply with the notice is an offence; and
- (e) the details of the right to appeal against the notice under regulation 19C.

(3) An authorised officer may serve a notice on a person withdrawing, varying or suspending a compliance notice.

F3 Regs. 19A-19C inserted (25.12.2020) by [The Food and Feed Hygiene and Safety \(Miscellaneous Amendments\) \(England\) Regulations 2020 \(S.I. 2020/1410\)](#), regs. 1(2), **4(11)**

19B. The provisions are—

[^{F4}(a) paragraphs (2) and (3) of regulation 10A;]

- (b) paragraph (6) of regulation 12;
- (c) Article 16 of Regulation 1935/2004;
- (d) Article 5 of Regulation 1895/2005;
- (e) Articles 10(3) and 12 of Regulation 282/2008;
- (f) Articles 12 and 13 of Regulation 450/2009;
- (g) the second sentence of Article 8, Article 15 as read with Annex 4 and Article 16 of Regulation 10/2011;
- (h) Article 4 of Regulation 2018/213.

F3 Regs. 19A-19C inserted (25.12.2020) by [The Food and Feed Hygiene and Safety \(Miscellaneous Amendments\) \(England\) Regulations 2020 \(S.I. 2020/1410\)](#), regs. 1(2), **4(11)**

F4 Reg. 19B(a) substituted (31.12.2020 immediately after IP completion day) by [The Food and Feed Hygiene and Safety \(Miscellaneous Amendments\) \(England\) Regulations 2020 \(S.I. 2020/1410\)](#), regs. 1(3), **4(20)**

Appeal against a compliance notice

19C.—(1) Any person served with a compliance notice may appeal against that notice to a magistrates' court.

(2) The procedure on appeal to a magistrates' court is by way of complaint for an order, and the Magistrates' Courts Act 1980 applies to the proceedings.

(3) The period within which an appeal may be brought is one month from the date on which the compliance notice was served on the person wishing to appeal and the making of a complaint for an order is deemed for the purposes of this paragraph to be the bringing of the appeal.

(4) A compliance notice is not suspended pending an appeal unless—

- (a) an authorised officer suspends it under regulation 19A(3); or
 - (b) the court directs that it be suspended.
- (5) The court may—
- (a) confirm the notice or any requirement contained in it;
 - (b) vary the notice or any requirement contained in it; or
 - (c) revoke the notice or any requirement contained in it.]

F3 Regs. 19A-19C inserted (25.12.2020) by The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (England) Regulations 2020 (S.I. 2020/1410), regs. 1(2), **4(11)**

Execution and enforcement

[^{F5}20.—(1) Each food authority in its area is to execute and enforce Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 282/2008, Regulation 450/2009, Regulation 10/2011, Regulation 2018/213 and these Regulations.

(2) Each port health authority in its district is to execute and enforce Regulation 1935/2004, Regulation 1895/2005, Regulation 450/2009, Regulation 10/2011, Regulation 2018/213 and these Regulations.

- (3) The Food Standards Agency may execute and enforce the provisions of—
- (a) Articles 16 and 17(2) of Regulation 1935/2004;
 - (b) Article 10 of Regulation 282/2008;
 - (c) Article 13 of Regulation 450/2009;
 - (d) Article 8 and 16(1) of and Annex 1, Table 3 (notes on verification of compliance), Notes (23) and (27) to Regulation 10/2011; and
 - (e) Article 4(3) of Regulation 2018/213.]

F5 Reg. 20 substituted (25.12.2020) by The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (England) Regulations 2020 (S.I. 2020/1410), regs. 1(2), **4(12)**

Offences by corporate bodies or Scottish partnerships

21.—(1) 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—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person purporting to act in such a capacity,

that individual as well as the body corporate shall be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

(2) 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, that partner as well as the partnership shall be deemed to be guilty of that offence and liable to be proceeded against and punished accordingly.

Offences due to the act or default of a third party

22. Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person.

Time limit for prosecutions

23.—(1) No prosecution for an offence under these Regulations shall be begun after the expiry of three years from the commission of the offence or one year from its discovery by the prosecutor, whichever is the earlier.

(2) Paragraph (1) does not apply to an offence under [^{F6}regulation 19(3) or (4)] .

<p>F6 Words in reg. 23(2) substituted (25.12.2020) by The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (England) Regulations 2020 (S.I. 2020/1410), regs. 1(2), 4(13)</p>

General defences

24.—(1) In any proceedings for an offence under these Regulations it shall, subject to paragraph (5), be a defence to prove that the person accused (“the accused”) took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the accused or by a person under the control of the accused.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under [^{F7}regulation 4(3), 7(1), 14(1), 15B, 16(4), 17B or 19(1)] who did not import or prepare the material or article in respect of which the offence is alleged to have been committed shall be taken to have established the defence provided by paragraph (1) if the requirements of paragraphs (3) or (4) are satisfied.

(3) The requirements of this paragraph are satisfied if it is proved that —

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reliance on information supplied by such a person;
- (b) either —
 - (i) the accused carried out all such checks of the material or article in question as were reasonable in all the circumstances, or
 - (ii) it was reasonable in all the circumstances for the accused to rely on checks carried out by the person who supplied the accused with that material or article; and
- (c) the accused did not know and had no reason to suspect at the time the offence was committed that the act or omission would amount to an offence under these Regulations.

(4) The requirements of this paragraph are satisfied if the offence is one of placing on the market and it is proved that —

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reliance on information supplied by such a person;
- (b) the placing on the market of which the offence consisted was not done under the name or mark of the accused; and
- (c) the accused did not know and could not reasonably be expected to know at the time the offence was committed that the act or omission would amount to an offence under these Regulations.

(5) If in any case the defence provided by this regulation involves the allegation that the commission of the offence was due to the act or default of another person, or to reliance on information supplied by another person, the accused shall not without leave of the court be entitled to rely on that defence unless —

- (a) at least seven clear days before the hearing; and
- (b) where the accused has previously appeared before the court in connection with the alleged offence, within one month of the first such appearance,

the accused has served on the prosecutor a written notice giving such information identifying or assisting in the identification of that other person as was then in the possession of the accused.

F7 Words in reg. 24(2) substituted (25.12.2020) by [The Food and Feed Hygiene and Safety \(Miscellaneous Amendments\) \(England\) Regulations 2020 \(S.I. 2020/1410\)](#), regs. 1(2), 4(14)

Procedure where a sample is to be analysed

25.—(1) An authorised officer who has procured a sample under section 29 of the Act and who considers it should be analysed shall divide the sample into three parts.

(2) If the sample consists of sealed containers and opening them would, in the opinion of the authorised officer, impede a proper analysis, the authorised officer shall divide the sample into parts by putting the containers into three lots, and each lot shall be treated as being a part.

- (3) The authorised officer shall —
 - (a) if necessary place each part in a suitable container and seal it;
 - (b) mark each part or container;
 - (c) as soon as is reasonably practicable, give one part to the owner and notify the owner in writing that the sample will be analysed;
 - (d) submit one part for analysis in accordance with section 30 of the Act; and
 - (e) retain one part for future submission under regulation 26.

Secondary analysis by the Government Chemist

26.—(1) Where a sample has been retained under regulation 25(3)(e) and —

- (a) proceedings are intended to be or have been commenced against a person for an offence under these Regulations; and
- (b) the prosecution intends to adduce as evidence the result of the analysis mentioned in regulation 25(1),

paragraphs (2) to (7) apply.

- (2) The authorised officer —
 - (a) may of the officer's own volition; or
 - (b) shall —
 - (i) if requested by the prosecutor (if a person other than the authorised officer),
 - (ii) if the court so orders, or
 - (iii) (subject to paragraph (6)) if requested by the accused,

send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist shall analyse the part sent under paragraph (2) and send to the authorised officer a certificate specifying the results of the analysis.

(4) Any certificate of the results of analysis transmitted by the Government Chemist shall be signed by or on behalf of the Government Chemist, but the analysis may be carried out by any person under the direction of the person who signs the certificate.

(5) The authorised officer shall immediately on receipt supply the prosecutor (if a person other than the authorised officer) and the accused with a copy of the Government Chemist's certificate of analysis.

(6) Where a request is made under paragraph (2)(b)(iii) the authorised officer may give notice in writing to the accused requesting payment of a fee specified in the notice to defray some or all of the Government Chemist's charges for performing the functions under paragraph (3), and in the absence of agreement by the accused to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

(7) In this regulation “the accused” includes a person against whom an authorised officer is intending to commence proceedings.

Application of various provisions of the Act

27.—(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part of it is to be construed as a reference to these Regulations —

- (a) section 2 (extending meaning of “sale” etc);
- (b) section 30(8) (analysis etc. of samples) ^{M1}.

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the reference to the Act in subsection (1) is to be construed as including a reference to Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, [^{F8}Regulation 282/2008, Regulation 450/2009, Regulation 10/2011 or Regulation 2018/213] as appropriate.

(3) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act is to be construed as including a reference to Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, [^{F9}Regulation 282/2008, Regulation 450/2009, Regulation 10/2011 or Regulation 2018/213], as appropriate, and to these Regulations —

- (a) section 3 (presumptions that food intended for human consumption) with the modifications that the references to “sold” and “sale” is to be deemed to include references to “placed on the market” and “placing on the market” respectively;
- (b) section 44 (protection of officers acting in good faith).

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| F8 | Words in reg. 27(2) substituted (25.12.2020) by The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (England) Regulations 2020 (S.I. 2020/1410) , regs. 1(2), 4(15) |
| F9 | Words in reg. 27(3) substituted (25.12.2020) by The Food and Feed Hygiene and Safety (Miscellaneous Amendments) (England) Regulations 2020 (S.I. 2020/1410) , regs. 1(2), 4(15) |

Marginal Citations

- M1** Section 30(8) sets out the evidential status of certificates of analysis and examination provided by food analysts and examiners.

Changes to legislation:

There are currently no known outstanding effects for the The Materials and Articles in Contact with Food (England) Regulations 2012, PART 9.