

## SCHEDULES

### SCHEDULE 2

Regulation 5

#### Application and modification of provisions of the Act

### PART 1

#### Modification of section 10(1)

1. For section 10(1) of the Act (improvement notices) substitute—

“If an authorised officer has reasonable grounds for believing that a person is failing to comply with any provision specified in Schedule 1 to the Novel Foods (Wales) Regulations 2017, the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”)—

- (a) state the officer’s grounds for believing that the person is failing to comply with the relevant provision;
- (c) specify the matters which constitute the person’s failure so to comply;
- (d) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and
- (e) require the person to take those measures, or measures that are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.”

### PART 2

#### Modification of section 9

2. For section 9 of the Act (inspection and seizure of suspected food) substitute—

“(1) This section applies where it appears to any authorised officer of a food authority that Article 6(2) of Regulation (EU) 2015/2283 is being, or has been, contravened in relation to any food which has been placed on the market.

(2) The authorised officer may either—

- (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food—
  - (i) is not to be used for human consumption; and
  - (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or
- (b) seize the food and remove it in order to have it dealt with by a justice of the peace; and any person who knowingly contravenes the requirements of a notice under paragraph (a) above is guilty of an offence and liable on summary conviction to a fine.

*Status: This is the original version (as it was originally made).*

(3) Where the authorised officer exercises the powers conferred by subsection (2)(a) above, the authorised officer must, as soon as is reasonably practicable and in any event within 21 days, determine whether or not they are satisfied that the food complies with Article 6(2) of Regulation (EU) 2015/2283, and—

- (a) if so satisfied, immediately withdraw the notice;
- (b) if not so satisfied, seize the food and remove it in order to have it dealt with by a justice of the peace.

(4) Where an authorised officer exercises the powers conferred by subsection (2)(b) or (3)(b) above, the authorised officer must inform the person in charge of the food that it is to be dealt with by a justice of the peace and—

- (a) any person who might be liable to a prosecution in respect of the food must, if attending before the justice of the peace by whom the food falls to be dealt with, be entitled to be heard and to call witnesses; and
- (b) that justice of the peace may, but need not, be a member of the court before which any person is charged with an offence in relation to that food.

(5) If it appears to a justice of the peace, on the basis of such evidence as the justice of the peace considers appropriate in the circumstances, that any food falling to be dealt with under this section fails to comply with Article 6(2) of Regulation (EU) 2015/2283, the justice of the peace must condemn the food and order—

- (a) the food to be destroyed or to be disposed of as to prevent it from being used for human consumption; and
- (b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the food.

(6) If a notice under subsection (2)(a) above is withdrawn, or the justice of the peace by whom any food falls to be dealt with under this section refuses to condemn it, the food authority must compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(7) Any disputed question as to the right to or the amount of any compensation payable under subsection (6) above is to be determined by arbitration.

(8) For the purposes of this section, “Regulation (EU) 2015/2283” means Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and [Commission Regulation \(EC\) No 1852/2001](#).”

## PART 3

## Application and modification of other provisions of the Act

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of the Act</i>	<i>Modifications</i>
Section 2 (extended meaning of “sale” etc.)	For “this Act” (in each place it occurs) substitute “the Novel Foods (Wales) Regulations 2017”.
Section 3 (presumptions that food intended for human consumption)	In subsection (1), for “this Act” substitute “the Novel Foods (Wales) Regulations 2017”.
Section 20 (offences due to fault of another person)	For “any of the preceding provisions of this Part” substitute “section 10(2), as applied by regulation 5(1) of the Novel Foods (Wales) Regulations 2017 or under regulation 4 of those Regulations”.
Section 21(1) and (5) (defence of due diligence)	In subsection (1), for “any of the preceding provisions of this Part” substitute “section 10(2), as applied by regulation 5(1) of the Novel Foods (Wales) Regulations 2017 or under regulation 4 of those Regulations”.
Section 30(6) and (8) (evidence of certificates given by a food analyst or examiner)	In subsection (8), for “this Act” substitute “the Novel Foods (Wales) Regulations 2017”.
Section 32 (powers of entry)	In subsection (1), for paragraphs (a) to (c), substitute “(a) to enter any premises within the authority’s area for the purpose of ascertaining whether Article 6(2) of Regulation (EU) 2015/2283 is being or has been contravened on the premises;”.
Section 33 (obstruction etc. of officers)	In subsection (1), for “this Act” (in each place it occurs) substitute “the Novel Foods (Wales) Regulations 2017”.
Section 35(1) <sup>(1)</sup> and (2) (punishment of offences)	In subsection (1), after “section 33(1) above”, insert “, as applied and modified by regulation 5 of, and Part 3 of Schedule 2 to, the Novel Foods (Wales) Regulations 2017”.
(1) Section 35(1) is amended by paragraph 42 of Schedule 26 to the Criminal Justice Act 2003 (c. 44) from a date to be appointed. There are other amendments to section 35(1) not relevant to these Regulations.	
(2) Section 36A was inserted by section 40(1) of, and paragraphs 7 and 16 of Schedule 5 to, the Food Standards Act 1999 (c. 28).	

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<i>Column 1</i>	<i>Column 2</i>
<i>Provision of the Act</i>	<i>Modifications</i>
	In subsection (2), in the opening words, for “any other offence under this Act” substitute “an offence under section 33(2), as applied by regulation 5 of, and Part 3 of Schedule 2 to, the Novel Foods (Wales) Regulations 2017.”.
Section 36 (offences by bodies corporate)	In subsection (1), for “this Act” substitute “section 10(2), as applied by regulation 5(1) of the Novel Foods (Wales) Regulations 2017 or under regulation 4 of those Regulations”.
Section 36A <sup>(2)</sup> (offences by Scottish partnerships)	For “this Act” substitute “section 10(2), as applied by regulation 5(1) of the Novel Foods (Wales) Regulations 2017 or under regulation 4 of those Regulations”.
Section 37(1) and (6) (appeals to a magistrates’ court)	For subsection (1) substitute— “(1) Any person who is aggrieved by a decision of an authorised officer of a food authority to serve an improvement notice under section 10(1), as applied and modified by regulation 5 of, and Part 1 of Schedule 2 to, the Novel Foods (Wales) Regulations 2017, may appeal to a magistrates’ court.”  In subsection (6)—  for “(3) or (4)” substitute “(1)”, and  in paragraph (a), omit “or to the sheriff”.
Section 39 (appeals against improvement notices)	For subsection (1) substitute— “(1) On an appeal against an improvement notice served under section 10(1), as applied and modified by regulation 5 of, and Part 1 of Schedule 2 to, the Novel Foods (Wales) Regulations 2017, the magistrates’ court may either cancel or affirm the notice and, if it affirms it, may do so either in its original form or with such
(1)	Section 35(1) is amended by paragraph 42 of Schedule 26 to the Criminal Justice Act 2003 (c. 44) from a date to be appointed. There are other amendments to section 35(1) not relevant to these Regulations.
(2)	Section 36A was inserted by section 40(1) of, and paragraphs 7 and 16 of Schedule 5 to, the Food Standards Act 1999 (c. 28).

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of the Act</i>	<i>Modifications</i>
	modifications as the magistrates' court may in the circumstances think fit.”
	In subsection (3), omit “for want of prosecution”.
(1)	Section 35(1) is amended by paragraph 42 of Schedule 26 to the Criminal Justice Act 2003 (c. 44) from a date to be appointed. There are other amendments to section 35(1) not relevant to these Regulations.
(2)	Section 36A was inserted by section 40(1) of, and paragraphs 7 and 16 of Schedule 5 to, the Food Standards Act 1999 (c. 28).