

## SCHEDULE 4

Regulation 26

### TEMPERATURE CONTROL REQUIREMENTS

#### Scope

1. This Schedule does not apply in relation to—
  - (a) any food business operation to which Regulation 853/2004 applies; or
  - (b) any food business operation carried out on a ship or aircraft.

#### Chill holding requirements

- 2.—(1) Subject to paragraph 2 (2) and paragraph 3, any person who keeps 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 shall be guilty of an offence.
- (2) Sub-paragraph (1) shall not apply in relation to any food which, as part of a mail order transaction, is being conveyed to an ultimate consumer.
- (3) Subject to paragraph 3, 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

3. Paragraph 2 (1) and (3) shall not apply in relation 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 at or above 63°C 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 not 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 not when the process of ripening or maturation is completed;
  - (e) raw food intended for further processing (including cooking) before human consumption, but only if that processing, if undertaken correctly, will render that food fit for human consumption;

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- (f) food to which Council Regulation 1906/90 applies; and
- (g) food to which Council Regulation 1907/90 applies.

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

4.—(1) In any proceedings for an offence consisting of a contravention of paragraph 2 (1), it shall be a defence for the accused to prove that—

- (a) a food business responsible for manufacturing, preparing or processing the food, including, where relevant, the accused, 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 accused is that food business, been communicated to the accused 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 accused 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**

5.—(1) In any proceedings for an offence consisting of a contravention of paragraph 2 (1), it shall be a defence for the accused 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, where a recommendation has been made pursuant to paragraph 4 (1), 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 consisting of a contravention of paragraph 2 (1), it shall be a defence for the accused to prove that the food—

- (a) was being transferred—
  - (i) from premises at which the food was going to be kept at or below 8°C or in appropriate circumstances the recommended temperature to a vehicle used for the purposes of a food business, or
  - (ii) to such premises from such a vehicle; 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

6. Any person who in the course of the activities of a food business keeps at or in food premises at a temperature below 63°C any food which—

- (a) has been cooked or reheated;
- (b) is for service or on display for sale; and
- (c) needs to be kept at or above 63°C in order to control the growth of pathogenic micro-organisms or the formation of toxins,

shall be guilty of an offence.

### Hot holding defences

7. In any proceedings for an offence consisting of a contravention of paragraph 6, it shall be a defence for the accused 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 re-heating, 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 any period of time specified in that scientific assessment; and
- (b) at the time of the commission of the alleged offence, the food was held in a manner which was justified in the light of that scientific assessment.

(2) In any proceedings for an offence consisting of a contravention of paragraph 6, it shall be a defence for the accused 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.

### Interpretation

8. In this Schedule—

“Council Regulation 1906/90” means Council Regulation (EEC) No. 1906/90 on certain marketing standards for poultry<sup>(1)</sup> as last amended by Council Regulation (EC) No. 1101/98 amending Regulation (EEC) No. 1906/90 on certain marketing standards for poultrymeat<sup>(2)</sup>;

“Council Regulation 1907/90” means Council Regulation (EEC) No. 1907/90 on certain marketing standards for eggs<sup>(3)</sup> as last amended by Council Regulation (EC) No. 2052/2003 amending Regulation (EEC) No. 1907/90 on certain marketing standards for eggs<sup>(4)</sup>;

“recommended temperature” means a specified temperature which has been recommended in accordance with paragraph 4(1)(a)(i); and

“shelf life” means—

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(1) O.J. No. L173, 6.7.90, p. 1

(2) O.J. No. L157, 30.5.98, p. 12

(3) O.J. No. L173, 6.7.90, p. 5

(4) O.J. No. L305, 22.11.2003, p. 1

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- (a) in relation to food with respect to which an indication of minimum durability is required in accordance with regulation 20 of the Food Labelling Regulations (Northern Ireland) 1996<sup>(5)</sup> (form of indication of minimum durability), the period up to and including the date required to be included in that indication;
- (b) in relation to food with respect to which a “use by” date is assigned in the form required in accordance with regulation 21 of the Food Labelling Regulations (Northern Ireland) 1996 (form of indication of “use by” date), the period up to and including that date; and
- (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.

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(5) [S.R. 1996 No. 383](#), to which there are amendments not relevant to these Regulations