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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No. 432**

**The Genetically Modified Food (Scotland) Regulations 2004**

**Application of various provisions of the Act**

**6.—(1)** The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in these sections to the Act or any Part thereof is deemed to be a reference to these Regulations and Chapter II of the Community Regulation:—

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21 (defence of due diligence);
- (d) section 22 (defence of publication in the course of business);
- (e) section 29 (procurement of samples);
- (f) section 30(8) (documentary evidence);
- (g) section 32 (powers of entry);
- (h) section 33 (obstruction etc. of officers);
- (i) section 35(1) to (3) (punishment of offences) insofar as it relates to offences under section 33(1) and (2) as applied by paragraph (h);
- (j) section 36 (offences by bodies corporate);
- (k) section 36A (offences by Scottish partnerships); and
- (l) section 44 (protection of officers acting in good faith).

(2) Section 34 (time limit for prosecutions) shall apply to offences under regulation 5 as it applies to offences under section 35(2) of the Act, and—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient to warrant the proceedings came to the knowledge of the prosecutor shall be conclusive evidence of that fact;
- (b) a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(3) Section 8(3) of the Act shall apply for the purposes of these Regulations as if it read—

“(3) Where any food which fails to comply with a specified Community provision within the meaning of the Genetically Modified Food (Scotland) Regulations 2004 is part of a batch, lot or consignment of food of the same class or description, it shall be presumed for the purposes of section 9 as applied by those Regulations until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with that specified Community provision.”.

(4) Section 9 of the Act (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if it read—

“**9.—(1)** An authorised officer of a food authority may at all reasonable times inspect any food for human consumption which—

- (a) has been placed on the market; or
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of placing it on the market,

and subsections (2) to (11) shall apply where it appears to an authorised officer taking account of all information available to that officer that the placing on the market of any food fails to comply with a specified Community provision.

(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 or any portion of it—
  - (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 the sheriff,

and any person who knowingly contravenes the requirements of a notice under paragraph (a) shall be guilty of an offence.

(3) Where the authorised officer exercises the powers conferred by subsection (2)(a) that officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not that officer is satisfied that the food complies with the specified Community provisions and—

- (a) if the authorised officer is so satisfied, shall forthwith withdraw the notice; or
- (b) if the authorised officer is not so satisfied, shall seize the food and remove it in order to have it dealt with by the sheriff.

(4) Where an authorised officer exercises the powers conferred by subsection (2)(b) or (3)(b), the authorised officer shall inform the person in charge of the food of the intention to have it dealt with by the sheriff, and any person who might be liable to prosecution under the Genetically Modified Food (Scotland) Regulations 2004 (“the Regulations”) in respect of the food shall, if that person attends before the sheriff by whom the food falls to be dealt with, be entitled to be heard and to call witnesses.

(5) Subject to subsection (6), if it appears to the sheriff, on the basis of such evidence as the sheriff considers appropriate in the circumstances, that any food fails to comply with any of the specified Community provisions, the sheriff shall condemn the food and order it to be destroyed or to be so disposed of as to prevent it from being used for human consumption.

(6) Where the food is the subject of an authorisation issued under Section 1 of Chapter II of Regulation (EC) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed, and has been produced in accordance with any conditions relating to that authorisation but is not labelled as required by Article 13 of that Regulation, the sheriff may—

- (a) order the food to be so labelled within a period or periods specified by the sheriff; and
- (b) where it has not been so labelled within the period or periods specified, condemn the food and order it to be destroyed or so disposed of as to prevent it from being used for human consumption.

(7) Any expenses incurred in connection with the detention, labelling, destruction or disposal of the food pursuant to sub-sections (2), (5) or (6) shall be borne by the operator.

(8) If a notice under subsection (2)(a) is withdrawn, or the sheriff by whom any food falls to be dealt with under subsections (5) or (6) refuses to condemn it or to order it to be labelled in accordance with these subsections, the food authority shall compensate the

owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(9) Any disputed question as to the right to or the amount of any compensation payable under subsection (8) shall be determined by a single arbiter appointed, failing agreement by the parties, by the sheriff.

(10) Where the person in charge of the food has consented to receive a notice under subsection (2)(a) by electronic communications to that person—

- (a) that notice may be served by sending it to that person by electronic communications; and
- (b) where such a notice has been so served, the service is deemed to have been effected by properly addressing and transmitting the notice.

(11) In this section “specified Community provision” has the same meaning as in the Regulations and “electronic communications” has the same meaning as in the Electronic Communications Act 2000(1).”.

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**Commencement Information**

**II** [Reg. 6](#) in force at 15.11.2004, see [reg. 1\(1\)](#)

**Changes to legislation:**

There are currently no known outstanding effects for the The Genetically Modified Food (Scotland) Regulations 2004, Section 6.