
SCOTTISH STATUTORY INSTRUMENTS

2008 No. 395

The Eggs and Chicks (Scotland) (No. 2) Regulations 2008

PART 1

General

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Eggs and Chicks (Scotland) (No. 2) Regulations 2008.

(2) These Regulations come into force on 19th December 2008.

(3) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

“authorised officer” means any person who has written authority from an enforcement authority to act in matters arising under or in relation to the Act or these Regulations;

“breeding establishment” has the meaning given by Article 1(3)(b) of Commission Regulation (EC) No. 617/2008;

“chicks” has the meaning given by Article 1(2) of Commission Regulation (EC) No. 617/2008;

“Commission Regulation (EC) No. 617/2008” means Commission Regulation (EC) No. 617/2008 laying down detailed rules for implementing Council Regulation (EC) No. 1234/2007 as regards marketing standards for eggs for hatching and farmyard poultry chicks(1), as amended from time to time;

“Commission Regulation (EC) No. 589/2008” means Commission Regulation (EC) No. 589/2008 laying down detailed rules for implementing Council Regulation (EC) No. 1234/2007 as regards marketing standards for eggs(2), as amended from time to time;

“Single CMO Regulation” means Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(3), as amended from time to time;

“Council Directive 1999/74/EC” means Council Directive 1999/74/EC laying down minimum standards for the protection of laying hens(4), as amended from time to time;

(1) O.J. No. L 168, 28.6.2008, p.5.

(2) O.J. No. L 163, 24.6.2008, p.6. This Regulation has been amended by Commission Regulation (EC) 598/2008 O.J. No. L 164, 25.6.2008, p.14.

(3) O.J. No. L 299, 16.11.2007, p.1. This Regulation was last amended by Council Regulation (EC) 510/2008 (O.J. No. L 149, 7.6.2008, p.61).

(4) O.J. No. L 203, 3.8.1999, p.53. The Directive has been amended by Council Regulation (EC) 806/2003 (O.J. No. L 122, 16.5.2003, p.1).

“Directive [2000/13/EC](#)” means Directive [2000/13/EC](#) of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs⁽⁵⁾, as amended from time to time;

“eggs” has the meaning given by sub paragraph (k) of the second paragraph of Article 1 of Commission Regulation [\(EC\) No. 589/2008](#);

“eggs for hatching” has the meaning given by Article 1(1) of Commission Regulation [\(EC\) No. 617/2008](#);

“enforcement authority” means an authority exercising a function conferred on it by regulation 15;

“final consumer” has the meaning given by sub paragraph (r) of the second paragraph of Article 1 of Commission Regulation [\(EC\) No. 589/2008](#);

“food authority” has the same meaning as in section 5(2)(6) of the Act;

“hatchery” has the meaning given by Article 1(3)(c) of Commission Regulation [\(EC\) No. 617/2008](#);

“packing centre” has the meaning given by sub paragraph (q) of the second paragraph of Article 1 of Commission Regulation [\(EC\) No. 589/2008](#);

“pedigree breeding establishment” has the meaning given by Article 1(3)(a) of Commission Regulation [\(EC\) No. 617/2008](#); and

“production site” has the meaning given by sub paragraph (p) of the second paragraph of Article 1 of Commission Regulation [\(EC\) No. 589/2008](#).

(2) Any expression not defined in paragraph (1) and used in Part 2 of, or Schedule 1 to, these Regulations, and in Part C of Annex XIV to the Single CMO Regulation has the same meaning in those provisions of these Regulations as it does in the Single CMO Regulation.

(3) Any expression not defined in paragraph (1) and used in regulation 3(2) or Part 3 of, or Schedule 2 to, these Regulations and in Part A of Annex XIV to the Single CMO Regulation or Commission Regulation [\(EC\) No. 589/2008](#), has the same meaning in those provisions of these Regulations as it does in the EC Regulation in which it is used.

(4) Any reference to a contravention of or failure to comply with any provision mentioned in Schedule 1 means a contravention or failure to comply with any provision of—

- (a) the Single CMO Regulation mentioned in column 1 of Part 1 of Schedule 1, as read with any provision mentioned in any corresponding entry in column 2 of that Part; or
- (b) Commission Regulation [\(EC\) No. 617/2008](#) mentioned in column 1 of Part 2 of Schedule 1, as read with any provision mentioned in any corresponding entry in column 2 of that Part.

(5) Any reference to a contravention of or failure to comply with any provision mentioned in Schedule 2 means a contravention of or failure to comply with any provision of—

- (a) the Single CMO Regulation mentioned in column 1 of Part 1 of Schedule 2, as read with any provision mentioned in any corresponding entry in column 2 of that Part; or
- (b) Commission Regulation [\(EC\) No. 589/2008](#) mentioned in column 1 of Part 2 of Schedule 2, as read with any provision mentioned in any corresponding entry in column 2 of that Part.

(5) O.J. No. L 109, 6.5.2000, p.29. The Directive has been amended by Commission Directive [2001/101/EC](#) (O.J. No. L 310, 28.11.2001, p.19), Directive [2003/89/EC](#) of the European Parliament and of the Council (O.J. No. L 308, 25.11.2003, p.15), Council Directive [2006/107/EC](#) (O.J. No. L 363, 20.12.2006, p.411), Commission Directive [2006/142/EC](#) (O.J. No. L 368, 23.12.2006, p.110) and Commission Directive [2007/68/EC](#) (O.J. No. L 310, 28.11.2007, p.11).

(6) Section 5(2) was amended by paragraph 163(2) of Schedule 13 to the Local Government etc (Scotland) Act [1994 \(c. 39\)](#).

Products to which these Regulations apply

3.—(1) These Regulations apply to—

- (a) eggs for hatching and chicks to which point I(1) of Part C of Annex XIV to the Single CMO Regulation and Commission Regulation (EC) No. 617/2008 apply; and
- (b) eggs to which point I(1) of Part A of Annex XIV to the Single CMO Regulation and Commission Regulation (EC) No. 589/2008 apply (eggs in shell for consumption produced by hens of the species *Gallas gallas*).

(2) But they do not apply to—

- (a) establishments and hatcheries of the type mentioned in point I(2) of Part C of Annex XIV to the Single CMO Regulation;
- (b) the sale of eggs to which point I(1) of Part A of Annex XIV to the Single CMO Regulation and Commission Regulation (EC) No. 589/2008 apply, where the eggs are sold, without any quality or weight grading, directly to the final consumer by the producer—
 - (i) on the production site; or
 - (ii) by door to door selling in the region of production; or
- (c) except in so far as they relate to the requirement imposed by point III(3) of Part A of Annex XIV to the Single CMO Regulation, the sale of eggs to which point I(1) of Part A of Annex XIV to that Regulation and Commission Regulation (EC) No. 589/2008 apply, where the eggs are sold, without any quality or weight grading, directly to the final consumer by the producer in a local public market in the region of production.

(3) In paragraph (2)(b)(ii) “door to door selling” means a sale which is made during an unsolicited visit by a producer to the home of the final consumer, or to the home of another person, or to the place of work of the final consumer.

PART 2

Eggs for hatching and chicks

Compliance with Community provisions on eggs for hatching and chicks

4. Any person who contravenes, or fails to comply with, any provision mentioned in Schedule 1 commits an offence.

Registration of establishments

5.—(1) The Scottish Ministers are designated as the competent agency for the purpose of Article 2(1) of Commission Regulation (EC) No. 617/2008 (registration of pedigree breeding establishments, breeding establishments and hatcheries).

(2) Where an application is made to the Scottish Ministers pursuant to Article 2(1) of Commission Regulation (EC) No. 617/2008, they must notify the applicant in writing of the matters specified in paragraph (3) within 28 days.

(3) The specified matters for the purpose of paragraph (2) are—

- (a) the decision of the Scottish Ministers on the application;
- (b) the reasons for any refusal to grant the application; and
- (c) in the case of any refusal to grant the application, the right of appeal conferred by regulation 17.

(4) Where the Scottish Ministers decide to withdraw a registration of an establishment because of a contravention of or failure to comply with any provision mentioned in Schedule 1, they must notify the person carrying on business at the establishment in writing of the matters specified in paragraph (5) within 28 days.

(5) The specified matters for the purpose of paragraph (4) are—

- (a) the decision of the Scottish Ministers to withdraw the registration;
- (b) the date on which the withdrawal of the registration is to take effect;
- (c) the reasons for the withdrawal; and
- (d) the right of appeal conferred by regulation 17.

(6) For the purposes of calculating the 28 day time limit specified in paragraph (2) no account is to be taken of any period—

- (a) during which the Scottish Ministers request an applicant to provide further data and the data have not been provided;
- (b) that the applicant is given—
 - (i) to provide oral or written explanations; or
 - (ii) to comply with any requirement laid down in Commission Regulation (EC) No. 617/2008.

(7) In this regulation anything to be done in writing—

- (a) may be done by an electronic communication within the meaning of the Electronic Communications Act 2000(7) if it is recorded and is subsequently capable of being reproduced;
- (b) must only, unless it is an application under paragraph (2), be sent to a person as an electronic communication if that person has consented to the use of that method of communication;
- (c) if done by electronic communication shall be regarded as sent when the text of it is received in legible form.

Derogation relating to the marking of eggs for hatching

6. Eggs for hatching may be marked in a different manner from that specified in Article 3(2) of Commission Regulation (EC) No. 617/2008 if the marking—

- (a) is in black, indelible, clearly visible and at least 10mm²; and
- (b) is carried out prior to insertion into the incubator, either at the producer establishment or at a hatchery.

PART 3

Eggs in shell for consumption

Compliance with Community provisions on eggs in shell for consumption

7. Any person who contravenes, or fails to comply with, any provision mentioned in Schedule 2 commits an offence.

(7) 2000 c. 7. Section 15(1) contains a definition of “electronic communication”, and was amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

Authorisation of packing centres to grade eggs

8.—(1) The Scottish Ministers are designated as the competent authority for the purpose of the first sub paragraph of Article 5(2) of Commission Regulation (EC) No. 589/2008 (authorisation of undertakings as packing centres to grade eggs).

(2) Where an application is made to the Scottish Ministers under the first sub paragraph of Article 5(2) of Commission Regulation (EC) No. 589/2008 to authorise an undertaking as a packing centre to grade eggs, they must notify the applicant in writing of the matters specified in paragraph (3) within 28 days.

(3) The specified matters for the purpose of paragraph (2) are—

- (a) the decision of the Scottish Ministers on the application;
- (b) the reasons for any refusal to grant an authorisation; and
- (c) in the case of any refusal to grant an authorisation, the right of appeal conferred by regulation 17.

(4) Where the Scottish Ministers decide to withdraw an authorisation of a packing centre to grade eggs because of a contravention of or failure to comply with any of the requirements mentioned in the first sub paragraph of Article 5(2) of Commission Regulation (EC) No. 589/2008, they must notify the person carrying on business at the packing centre in writing of the matters specified in paragraph (5) within 28 days.

(5) The specified matters for the purpose of paragraph (4) are—

- (a) the decision of the Scottish Ministers to withdraw the authorisation;
- (b) the date on which the withdrawal of the authorisation is to take effect;
- (c) the reasons for the withdrawal; and
- (d) the right of appeal conferred by regulation 17.

(6) For the purposes of calculating the 28 day time limit specified in paragraph (2) no account is to be taken of any period—

- (a) during which the Scottish Ministers request an applicant to provide further data and the data have not been provided; or
- (b) any period that the applicant is given—
 - (i) to provide oral or written explanations; or
 - (ii) to comply with any requirements laid down in the first sub paragraph of Article 5(2) of Commission Regulation (EC) No. 589/2008.

(7) In this regulation anything to be done in writing—

- (a) may be done by an electronic communication within the meaning of the Electronic Communications Act 2000 if it is recorded and is subsequently capable of being reproduced;
- (b) must only, unless it is an application under paragraph (2), be sent to a person as an electronic communication if that person has consented to the use of that method of communication;
- (c) if done by electronic communication shall be regarded as sent when the text of it is received in legible form.

Derogations relating to the marking of eggs

9.—(1) The provisions in the second sub paragraph of point III(1) of Part A of Annex XIV to the Single CMO Regulation (requiring class B eggs to be marked) shall not apply where class B eggs are to be marketed exclusively in the United Kingdom.

(2) The provisions in the first sub paragraph of point III(3) of Part A of Annex XIV to the Single CMO Regulation (requiring eggs sold by a producer to a final consumer in a local public market in the region of production to be marked with the producer code and/or with another indication in accordance with point III(1) of Part A of Annex XIV to the Council Regulation) shall not apply where a producer has no more than 50 laying hens if the name and address of the producer are indicated at the point of sale.

Livestock grazing on open-air runs

10.—(1) The Scottish Ministers are designated as the competent authority for the purpose of point 1(b) of Annex II to Commission Regulation (EC) No. 589/2008 (use of open air runs to which hens have access).

(2) For the purpose of point 1 of Annex II to Commission Regulation (EC) No. 589/2008 (setting down the minimum requirements that need to be met in order for eggs to be marketed as “free range eggs”) livestock grazing is authorised on open air runs to which egg producing hens have access.

Derogation relating to free-range eggs

11.—(1) By way of derogation from the provisions of point 1 of Annex II to Commission Regulation (EC) No. 589/2008, eggs to which paragraph (2) applies may be marketed as free range eggs although they have been produced in a system of production that does not comply with any one or more of the conditions specified in paragraph (3).

(2) This paragraph applies to eggs produced in an establishment with fewer than 350 laying hens or rearing breeding laying hens at the time the eggs are produced.

(3) The following conditions of Article 4(1) of Council Directive 1999/74/EC (provisions applicable to alternative systems) are specified for the purpose of paragraph (1)—

- (a) the second sentence of point 1(d);
- (b) point 1(e);
- (c) point 2;
- (d) point 3(a)(i); and
- (e) point 3(b)(i).

Derogation relating to barn eggs

12.—(1) By way of derogation from the provisions of point 2 of Annex II to Commission Regulation (EC) No. 589/2008, eggs to which paragraph (2) applies may be marketed as barn eggs although they have been produced in a system of production that does not comply with any one or more of the conditions specified in paragraph (3).

(2) This paragraph applies to eggs produced in an establishment with fewer than 350 laying hens or rearing breeding laying hens at the time the eggs are produced.

(3) The following conditions of Article 4(1) of Council Directive 1999/74/EC are specified for the purpose of paragraph (1)—

- (a) the second sentence of point 1(d);
- (b) point 1(e);
- (c) point 2;
- (d) point 3(a)(i); and
- (e) point 3(b)(i).

PART 4

Enforcement, miscellaneous and supplemental provisions

Powers of authorised officers

13.—(1) An authorised officer may direct any person to leave undisturbed for so long as is reasonably necessary for the purpose of any examination or investigation any—

- (a) eggs;
- (b) eggs for hatching or chicks;
- (c) packs or other containers for eggs, eggs for hatching or chicks;
- (d) labels or documents relating to eggs, eggs for hatching or chicks; and
- (e) any premises on or in which any eggs, eggs for hatching or chicks, any packs or other containers for eggs, eggs for hatching or chicks, and any labels or documents relating to such eggs or chicks are found.

(2) If an examination or investigation will not be carried out immediately after a direction has been given under paragraph (1), an authorised officer may apply tape to the packs or other containers for eggs or eggs for hatching that are subject to that direction, or otherwise secure them pending the examination or investigation.

(3) An authorised officer may direct any person to ensure that any—

- (a) eggs;
- (b) eggs for hatching or chicks;
- (c) packs or other containers for eggs, eggs for hatching or chicks; or
- (d) labels or documents relating to eggs, eggs for hatching or chicks,

which do not comply in any respect with the requirements of any provision mentioned in Schedule 1 (as regards eggs for hatching and chicks) or Schedule 2 (as regards other eggs), comply with those requirements before being removed from any land, vehicle or trailer, except as may be otherwise directed in writing by an authorised officer.

(4) Except as stated in paragraph (3), any direction given by an authorised officer under paragraph (1) or (3) can be given orally or in writing but any direction given orally must be confirmed in writing as soon as practicable and, in any event, within 24 hours.

(5) An authorised officer must not exercise the powers under paragraphs (1) to (3)—

- (a) except on the production, if so required, of a duly authenticated document showing the officer's authority; and
- (b) except for the purpose of enforcing these Regulations.

(6) A person is guilty of an offence if that person—

- (a) without reasonable excuse, fails to comply with any requirement imposed on that person by a direction given by an authorised officer under paragraph (1);
- (b) unless authorised to do so in writing by an authorised officer, tampers with any packs or containers that have been secured by an authorised officer under paragraph (2); or
- (c) without reasonable excuse, fails to comply with any requirement imposed on that person by a direction given by an authorised officer under paragraph (3).

Obstruction

14.—(1) A person is guilty of an offence if that person—

- (a) intentionally obstructs an authorised officer acting in the execution of these Regulations;
 - (b) without reasonable excuse, fails to give an authorised officer acting in the execution of these Regulations any assistance or information which that officer may reasonably require for the performance of the officer's functions under these Regulations;
 - (c) gives to an authorised officer acting in the execution of these Regulations any information which that person knows, or has reason to believe, to be false or misleading or recklessly gives information which is false or misleading; or
 - (d) without reasonable excuse, fails to produce a record when required to do so by an authorised officer acting in the execution of these Regulations.
- (2) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

Enforcement

15.—(1) Each food authority must enforce the provisions mentioned in Schedule 2, as read with regulation 7, insofar as they apply to—

- (i) the retail sale of eggs within their area; and
- (ii) the sale of eggs to a mass caterer in their area.

(2) The Scottish Ministers may enforce the provisions mentioned in Schedule 2, as read with regulation 7, insofar as they apply to the retail sale of eggs or the sale of eggs to a mass caterer.

(3) The Scottish Ministers must—

- (a) enforce the provisions mentioned in Schedule 1, as read with regulation 4;
- (b) enforce the provisions mentioned in Schedule 2, as read with regulation 7, insofar as they do not apply to the retail sale of eggs or the sale of eggs to a mass caterer.

(4) In this regulation—

- “mass caterer” means any of the entities referred to in Article 1(2) of Directive [2000/13/EC](#);
- “retail sale” means any sale other than a sale for use or resale in the course of a trade or business; and
- “sale” includes possession for sale and offer, exposure and advertisement for sale.

Duty to give assistance and provide information

16. An enforcement authority must give such assistance and information to any other enforcement authority as that other authority may reasonably require for the purpose of their duties under these Regulations.

Appeals

17.—(1) Any person who is aggrieved by a decision specified in paragraph (2) may appeal against that decision to a sheriff court.

(2) A specified decision for the purpose of paragraph (1) is a decision by the Scottish Ministers to refuse to—

- (a) register an establishment as a pedigree breeding establishment, other breeding establishment or hatchery under Article 2(1) of Commission Regulation [\(EC\) No. 617/2008](#), or to withdraw such a registration;
- (b) authorise an undertaking as a packing centre to grade eggs under Article 5(2) of Commission Regulation [\(EC\) No. 589/2008](#), or to withdraw such an authorisation.

(3) Section 37(4) to (6) of the Act has effect in relation to an appeal under this regulation as it has effect in relation to an appeal under that section, but with the omission of—

- (a) the references to appeals for which provision is made by regulations under Part II of the Act;
- (b) the references to subsection (3) and appeals to the magistrates' court in subsection (5) and (6); and
- (c) subsection (5)(b) and the word “or” immediately preceding it.

(4) The withdrawal of a registration or authorisation referred to in paragraph (2) shall not take effect until the time for appealing against it has expired, and, if an appeal is lodged, until the appeal is finally disposed of, withdrawn or abandoned.

Penalty

18. A person guilty of an offence specified in regulation 4, 7, 13(6) or 14(1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Extended period for bringing prosecutions

19.—(1) Proceedings for an offence under these Regulations may be commenced within the period of one year from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to the knowledge of the prosecutor.

(2) But no such proceedings shall be commenced by virtue of paragraph (1) more than three years after the commission of the offence.

(3) For the purposes of this regulation—

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

Application of various provisions of the Act

20.—(1) The following provisions of the Act (“the specified provisions”) shall apply for the purposes of these Regulations with the modifications specified in paragraph (2)—

- (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) as it applies to an offence under section 14 (selling food not of the nature or substance or quality demanded) or 15 (falsely describing or presenting food) of the Act;
- (d) section 29 (procurement of samples);
- (e) section 30(8) (documentary evidence in proceedings under the Act);
- (f) section 32 (powers of entry);
- (g) section 36 (offences by bodies corporate);
- (h) section 36A(8) (offences by Scottish partnerships);
- (i) section 44 (protection of officers acting in good faith);

(8) Section 36A was inserted by paragraphs 7 and 16 of Schedule 5 to the Food Standards Act 1999 (c. 28).

- (j) section 46(1) (expenses of authorised officers); and
 - (k) section 50(9) (service of documents).
- (2) The specified modifications are–
- (a) any reference in the specified provisions to the Act, or to a Part of the Act, or to specific sections of the Act, shall be construed as a reference to these Regulations, and in section 32(1)(a) the reference to “the provisions of this Act”, is to be construed as a reference to the provisions mentioned in Schedules 1 and 2;
 - (b) any reference in the specified provisions to an authorised officer, or an officer of an enforcement authority or a food authority, is to be construed as a reference to an authorised officer as defined in regulation 2(1);
 - (c) in relation to section 20, the reference to the section is to be construed as including a reference to that section as applied to these Regulations;
 - (d) in relation to section 29–
 - (i) in (b)(ii), the reference to section 32 is to be construed as including a reference to section 32 as applied to these Regulations; and
 - (ii) in paragraph (d) omit “or of regulations or orders made under it”;
 - (e) in relation to section 30(8)(a) omit “under subsection (6) above”;
 - (f) in relation to section 32–
 - (i) in subsection (1)(a), omit “, or of regulations or orders made under it”;
 - (ii) in subsection (4), the reference to the section is to be construed as including a reference to that section as applied to these Regulations;
 - (iii) in subsection (5), the reference to the section is to be construed as including a reference to that section as applied to these Regulations and the reference to “a food business” is to be construed as including a hatchery;
 - (iv) in subsection (6)(a), omit “or of regulations or orders made under it”; and
 - (v) in subsection (7), the reference to the section is to be construed as including a reference to that section as applied to these Regulations; and
 - (g) in relation to section 44, any reference to a food authority is to be construed as a reference to an enforcement authority.

Revocations

- 21.** The Eggs and Chicks (Scotland) Regulations 2008 are revoked(**10**).

Saving and transitional provisions

22.—(1) Notwithstanding the revocation in regulation 21, the Eggs and Chicks (Scotland) Regulations 2008 shall continue to have effect so far as they amend regulation 45 of the Food Labelling Regulations 1996(**11**) as if these Regulations had not been made.

(2) Any written authority granted to any person to act in matters arising under or in relation to the Eggs and Chicks (Scotland) Regulations 2008 has effect as if it referred to these Regulations.

(9) Section 50 was amended by paragraph 18 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c. 40).

(10) S.S.I. 2008/129.

(11) S.I.1996/1499; to which the last relevant amendment was made by S.S.I. 2008/129.

Consequential amendments

- 23.** The instruments specified in Schedule 3 are amended to the extent specified in that Schedule.

St Andrew's House,
26th November 2008

RICHARD LOCHHEAD
A member of the Scottish Executive