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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 395**

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

**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(1) (offences by Scottish partnerships);
  - (i) section 44 (protection of officers acting in good faith);
  - (j) section 46(1) (expenses of authorised officers); and
  - (k) section 50(2) (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<sup>(3)</sup>.

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

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

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

### **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<sup>(4)</sup> 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.

### **Consequential amendments**

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

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