

2023 No. 161

FOOD

**The Food (Scotland) Act 2015 (Compliance Notices)
Regulations 2023**

<i>Made</i>	- - - -	<i>23rd May 2023</i>
<i>Laid before the Scottish Parliament</i>		<i>25th May 2023</i>
<i>Coming into force</i>	- -	<i>30th June 2023</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 49(1) and (2)(c), and 52 of the Food (Scotland) Act 2015(a) and all other powers enabling them to do so.

The Scottish Ministers have had regard to relevant advice given by Food Standards Scotland in accordance with section 50(1)(a) of the Food (Scotland) Act 2015.

There has been consultation as required by Article 9 of Regulation (EC) 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the Food Safety Authority and laying down procedures in matters of food safety(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Food (Scotland) Act 2015 (Compliance Notices) Regulations 2023.

(2) These Regulations come into force on 30 June 2023.

(3) In these Regulations—

(a) “the 1990 Act” means the Food Safety Act 1990(c),

(b) “the 2015 Act” means the Food (Scotland) Act 2015.

Meaning of relevant offence, specified standard and specified period

2.—(1) For the purposes of Part 3 (administrative sanctions) of the 2015 Act, as it applies to compliance notices, an offence specified in the schedule is a “relevant offence”.

(2) The “specified standard” for the purposes of section 42(3) (compliance notices) of the 2015 Act is on the balance of probabilities.

(a) 2015 asp 1.

(b) EUR 178/2002. The duty to consult under section 50(1)(b) of the Food (Scotland) Act 2015 does not apply in this case as under subsection (3) subsection (1)(b) does not apply in any case in which a consultation is required by Article 9 of Regulation (EC) No. 178/2002.

(c) 1990 c. 16.

(3) The “specified period” for the purposes of section 43(3) (content and form of a compliance notice) of the 2015 Act is 14 days.

Application of provisions of the 1990 Act

3. The following provisions of the 1990 Act apply for the purposes of the provisions of the 2015 Act mentioned, subject to the modifications specified—

- (a) section 30(8) (documentary evidence in proceedings for offences) applies for the purposes of sections 44 (failure to comply with a compliance notice) and 48 (appeal against a compliance notice) of the 2015 Act with the modification that the reference to “this Act” is to be read as a reference to Part 3 of 2015 Act, as that Part applies to compliance notices,
- (b) section 34 (time limit for prosecutions) applies for the purposes of section 44 (failure to comply with a compliance notice) of the 2015 Act with the modification that the reference to “this Act which is punishable under section 35(A1), (A2) or (2) below” is to be read as a reference to section 44 of the 2015 Act,
- (c) section 40 (power to issue codes of practice) applies for the purposes of Part 3 of the 2015 Act as that Part applies to compliance notices with the modifications that—
 - (i) any reference to “this Act” is to be read as a reference to Part 3 of the 2015 Act, as that Part applies to compliance notices,
 - (ii) any reference to a “food authority” is to be read as a reference to an enforcement authority,
- (d) section 49(3) to (5) (form and authentication of documents) applies for the purposes of sections 42 (compliance notices) and 47 (withdrawal of a compliance notice) of the 2015 Act with the modifications that any reference to a “food authority” is to be read as a reference to an enforcement authority,
- (e) section 50 (service of documents) applies for the purposes of sections 42 (compliance notices) and 47 (withdrawal of a compliance notice) of the 2015 Act with the modification that any reference to “this Act” is to be read as a reference to Part 3 of the 2015 Act as that Part applies to compliance notices.

JENNI MINTO

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
23rd May 2023

SCHEDULE

Regulation 2(1)

Relevant Offences for the purposes of Part 3 of the 2015 Act as it applies to compliance notices

The Quick-frozen Foodstuffs Regulations 1990

1. An offence under any of the following provisions of the Quick-frozen Foodstuffs Regulations 1990(a)—

- (a) regulation 3 (sale of quick-frozen foodstuffs),
- (b) regulation 4 (packaging of quick-frozen foodstuffs intended for supply to the ultimate consumer),
- (c) regulation 5(1), (2), (3) and (4) (labelling of quick-frozen foodstuffs),
- (d) regulation 6 (equipment),
- (e) regulation 7(1A) (penalties and enforcement).

Food (Lot Marking) Regulations 1996

2. An offence under regulation 5(1) (enforcement) of the Food (Lot Marking) Regulations 1996(b).

Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997

3. An offence under regulation 6(1) (offences and penalties) of the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997(c).

Bread and Flour Regulations 1998

4. An offence under any of the following provisions of the Bread and Flour Regulations 1998(d)—

- (a) regulation 4(4)(a) and (4)(b)(ii) (composition of flour),
- (b) regulation 5 (additional ingredients),
- (c) regulation 6(2) (restrictions on the use of the words ‘wholemeal’ and ‘wheatgerm’).

Coffee Extracts and Chicory Extracts (Scotland) Regulations 2001

5. An offence under regulation 7(1) (penalties and enforcement) of the Coffee Extracts and Chicory Extracts (Scotland) Regulations 2001(e).

Kava-kava in Food (Scotland) Regulations 2002

6. An offence under regulation 4(1) (penalty and enforcement) of the Kava-kava in Food (Scotland) Regulations 2002(f).

(a) S.I. 1990/2615 relevant amending instrument is S.S.I. 2007/106.
(b) S.I. 1996/1502.
(c) S.I. 1997/2182.
(d) S.I. 1998/141.
(e) S.S.I. 2001/38.
(f) S.S.I. 2002/523.

Food Supplements (Scotland) Regulations 2003

7. An offence under regulation 9 (offences and penalties) of the Food Supplements (Scotland) Regulations 2003(a).

Cocoa and Chocolate Products (Scotland) Regulations 2003

8. An offence under regulation 8(1) (penalties and enforcement) of the Cocoa and Chocolate Products (Scotland) Regulations 2003(b).

Condensed Milk and Dried Milk (Scotland) Regulations 2003

9. An offence under regulation 7(1) (penalties and enforcement) of the Condensed Milk and Dried Milk (Scotland) Regulations 2003(c).

Specified Sugar Products (Scotland) Regulations 2003

10. An offence under regulation 7(1) (penalties and enforcement) of the Specified Sugar Products (Scotland) Regulations 2003(d).

Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004

11. An offence under any of the following provisions of the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004(e)—

- (a) regulation 4 (restrictions on the sale of processed CEREAL-BASED foods and baby foods),
- (b) regulation 5(1), (3) and (4) (general requirements as to manufacture and composition),
- (c) regulation 6 (added nutritional substances and nutrients),
- (d) regulation 7 (pesticide residues),
- (e) regulation 8 (labelling).

Jam and Similar Products (Scotland) Regulations 2004

12. An offence under regulation 7(1) (penalties and enforcement) of the Jam and Similar Products (Scotland) Regulations 2004(f).

Genetically Modified Food (Scotland) Regulations 2004

13. An offence under regulation 5 (offences and penalties) of the Genetically Modified Food (Scotland) Regulations 2004(g).

General Food Regulations 2004

14. An offence under any of the following provisions of the General Food Regulations 2004(h)—

- (a) regulation 4(b) (Article 14(1) food safety requirements),

(a) S.S.I. 2003/278.

(b) S.S.I. 2003/291.

(c) S.S.I. 2003/311.

(d) S.S.I. 2003/527.

(e) S.S.I. 2004/8 as amended by S.S.I. 2014/312.

(f) S.S.I. 2004/133.

(g) S.S.I. 2004/432.

(h) S.I. 2004/3279 to which there are no amendments relevant to these Regulations.

- (b) regulation 4(c) (Article 16 (presentation) in so far as it relates to food),
- (c) regulation 4(d) (Article 18(2) or (3) (traceability) in so far as it relates to food business operators),
- (d) regulation 4(e) (Article 19(4) responsibilities for food: food business operators).

Tryptophan in Food (Scotland) Regulations 2005

15. An offence under regulation 6(1) (offences and penalty) of the Tryptophan in Food (Scotland) Regulations 2005(a).

Addition of Vitamins, Minerals and Other Substances (Scotland) Regulations 2007

16. An offence under any of the following provisions of the Addition of Vitamins, Minerals and Other Substances (Scotland) Regulations 2007(b)—

- (a) regulation 4(2)(a) (Article 3(1) (requirement that only vitamins or minerals listed in Annex I and in form listed in Annex II may be added to food) as read with Article 17(1) (transitional application of national rules)),
- (b) regulation 4(2)(b) (Article 4 (prohibition on addition of vitamins and minerals to certain foods)),
- (c) regulation 4(2)(c) (Article 5(2) (requirement to observe purity criteria)),
- (d) regulation 4(2)(d) (Article 6(6) (requirement for added vitamins and minerals to be in the food in at least a significant amount as defined)),
- (e) regulation 4(2)(e) (Article 7(1), (2) and (3) (restrictions and conditions applying to labelling, presentation and advertising of foods to which vitamins or minerals have been added) as read with the first subparagraph of Article 54(3) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission regulation (EC) No 608/2004).

Nutrition and Health Claims (Scotland) Regulations 2007

17. An offence under regulation 5 (offences and penalties) of the Nutrition and Health Claims (Scotland) Regulations 2007(c).

Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No. 2) Regulations 2007

18. An offence under regulation 20 (offences and penalties) of the Natural Mineral Water, Spring Water and Bottled Water (Scotland) No. 2 Regulations 2007(d).

(a) S.S.I. 2005/479.
 (b) S.S.I. 2007/325 as amended by S.S.I. 2014/312, S.S.I. 2020/7 and S.S.I. 2020/156.
 (c) S.S.I. 2007/383 as amended by S.S.I. 2014/312.
 (d) S.S.I. 2007/483 as amended by S.S.I. 2009/273 and S.S.I. 2010/89.

Specified Products from China (Restriction on First Placing on the Market) (Scotland) Regulations 2008

19. An offence under regulation 3(1) (restriction on placing on the market of rice products) of the Specified Products from China (Restriction on First Placing on the Market) (Scotland) Regulations 2008(a).

Food Irradiation (Scotland) Regulations 2009

20. An offence under either of the following provisions of the Food Irradiation (Scotland) Regulations 2009(b)—

- (a) regulation 6(1)(b) (restriction on storage or transport),
- (b) regulation 8(1)(b) (documentation for food not ready for final sale).

Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Regulations 2009

21. An offence under regulation 3(1) (offences, penalties and execution and enforcement) of the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Regulations 2009(c).

Plastic Kitchenware (Conditions on Imports from China) (Scotland) Regulations 2011

22. An offence under regulation 4 (offences and penalties) of the Plastic Kitchenware (Conditions on Imports from China) (Scotland) Regulations 2011(d).

Materials and Articles in Contact with Food (Scotland) Regulations 2012

23. An offence under any of the following provisions of the Materials and Articles in Contact with Food (Scotland) Regulations 2012(e)—

- (a) regulation 4(3) (offences of contravening specified provisions of Regulation 1935/2004),
- (b) regulation 5 (offence of contravening Article 4 of Regulation 2023/2006),
- (c) regulation 7 (offences of contravening specified provisions of Regulation 450/2009),
- (d) regulation 14 (offences of contravening specified provisions of Regulation 10/2011),
- (e) regulation 16(4) (restrictions on the use of epoxy derivatives (BADGE, BFDGE and NOGE),
- (f) regulation 19(1) (offences and penalties).

Fish Labelling (Scotland) Regulations 2013

24. An offence under regulation 5 (offences) of the Fish Labelling (Scotland) Regulations 2013(f).

(a) S.S.I. 2008/148 as amended by S.S.I. 2012/3 and S.S.I. 2013/221.
(b) S.S.I. 2009/261.
(c) S.S.I. 2009/427.
(d) S.S.I. 2011/282.
(e) S.S.I. 2012/318 relevant amending instrument is S.S.I. 2019/32.
(f) S.S.I. 2013/256 as amended by S.S.I. 2015/48.

Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013

25. An offence under any of the following provisions of the Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013(a)—

- (a) regulation 3 (offence of contravening EU requirements on food additives),
- (b) regulation 4 (offence of contravening EU requirements on flavourings, including smoke flavourings),
- (c) regulation 5 (offence of contravening EU requirements on flavourings, including smoke flavourings),
- (d) regulation 6 (offence of contravening EU requirements on food enzymes),
- (e) regulation 15(1) (offences and penalties).

Fruit Juices and Fruit Nectars (Scotland) Regulations 2013

26. An offence under regulation 17 (offences and penalties) of the Fruit Juices and Fruit Nectars (Scotland) Regulations 2013(b).

Products Containing Meat etc. (Scotland) Regulations 2014

27. An offence under regulation 6(1) (penalties and enforcement) of the Products Containing Meat etc. (Scotland) Regulations 2014(c).

The Food Information (Scotland) Regulations 2014

28. An offence under regulation 10 (offences) of the Food Information (Scotland) Regulations 2014(d).

Honey (Scotland) Regulations 2015

29. An offence under regulation 17(1) (penalties and enforcement) of the Honey (Scotland) Regulations 2015(e).

Country of Origin of Certain Meats (Scotland) Regulations 2016

30. An offence under regulation 6(1) and (2) (offences and penalties) of the Country of Origin of Certain Meats (Scotland) Regulations 2016(f).

Food for Specific Groups (Scotland) Regulations 2016

31. An offence under regulation 4(1) (offences and penalties) of the Food for Specific Groups (Scotland) Regulations 2016(g).

The Caseins and Caseinates (Scotland) (No. 2) Regulations 2016

32. An offence under any of the following provisions of the Caseins and Caseinates (Scotland) (No. 2) Regulations 2016(h)—

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- (a) S.S.I. 2013/266 to which there are no amendments relevant to these Regulations.
 - (b) S.S.I. 2013/305.
 - (c) S.S.I. 2014/289 as amended by S.S.I. 2019/33.
 - (d) S.S.I. 2014/312 relevant amending instruments are S.S.I. 2015/410, S.S.I. 2016/191, S.S.I. 2020/156 and S.S.I. 2021/70.
 - (e) S.S.I. 2015/208 to which there are no amendments relevant to these Regulations.
 - (f) S.S.I. 2016/84 to which there are no amendments relevant to these Regulations.
 - (g) S.S.I. 2016/190 relevant amending instruments are S.S.I. 2018/392 and S.S.I. 2020/7.
 - (h) S.S.I. 2016/422 to which there are no amendments relevant to these Regulations.

- (a) regulation 4 (restriction on the marketing and use of edible acid caseins, edible rennet caseins and edible caseinates),
- (b) regulation 5(1) and (2) (labelling of edible acid caseins, edible rennet caseins and edible caseinates).

Novel Foods (Scotland) Regulations 2017

33. An offence under regulation 6(2) (as read with Articles 24 and 35(2)) of the Novel Foods (Scotland) Regulations 2017^(a).

(a) S.S.I. 2017/415.

Food for Specific Groups (Infant Formula and Follow-On Formula) (Scotland) Regulations 2020

34. An offence under regulation 4(1) (offences and penalties) of the Food for Specific Groups (Infant Formula and Follow-On Formula) (Scotland) Regulations 2020^(a).

^(a) S.S.I. 2020/6.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part 3 of the Food (Scotland) Act 2015 (“the 2015 Act”) provides for the creation of compliance notices in relation to specified offences under food legislation. These regulations specify relevant offences in relation to which compliance notices can be used.

Regulation 2(1) introduces the schedule. Regulation 2(2) provides for the evidentiary standard to which an authorised officer must be satisfied before they can issue a compliance notice under section 42 of the 2015 Act. Regulation 2(3) provides for the “specified period” which is the minimum period of time in which the required steps are to be taken to cease to commit a relevant offence as set out in section 43(1)(d), (2) and (3) of the 2015 Act.

Regulation 3 applies, with modifications, specified provisions of the Food Safety Act 1990 to section 42 (compliance notices), section 44 (failure to comply with a compliance notice), section 47 (withdrawal of a compliance notice), section 48 (appeal against a compliance notice) and Part 3 generally of the 2015 Act.

The schedule specifies relevant offences in relation to which a compliance notice may be issued under section 42 of the 2015 Act.

A full Business and Regulatory Impact Assessment of the effect that this instrument will have on the costs of business, the consumer sector and the public sector has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from Food Standards Scotland, Pilgrim House, Old Ford House, Aberdeen, AB11 5RL.

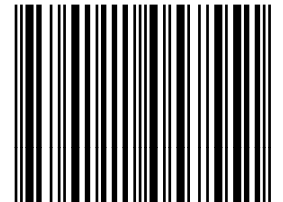
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