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STATUTORY INSTRUMENTS

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**1998 No. 994**

**The Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998**

**PART VI**

**ENFORCEMENT, PENALTIES AND REVOCATIONS**

**Functions of the Ministers and food authorities**

**52.**—(1) Subject to paragraph (2)(b), the Ministers shall perform the functions assigned to them by Chapters III and VI of Schedule 2.

(2) Each food authority shall perform—

- (a) the functions assigned to them by Chapters III and VI of Schedule 2; and
- (b) any function of the Ministers specified in paragraph 1 of Chapter VI of Schedule 2 which the Ministers require the food authority to undertake on their behalf.

(3) The Ministers and food authorities shall perform the functions assigned to them by Chapter V of Schedule 3.

**Offences and penalties**

**53.**—(1) If a person contravenes any provision of regulations 8 to 10, 13, 16 to 19(1), 21(1), (2) and (4), 22(1) to (3), 23, 25, 28 to 30, or 33 to 40, he shall be guilty of an offence against these Regulations.

(2) Subject to paragraph (3), a person guilty of an offence against these Regulations shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or both.

(3) Any person who—

- (a) without reasonable cause, fails to give any person acting on behalf of a food authority in matters arising under Part V any assistance or information which that person may reasonably require of him in connection with such matters; or
- (b) in purported compliance with any such requirement as is mentioned in sub-paragraph (a) intentionally or recklessly furnishes information which is false or misleading in a material particular,

shall be guilty of an offence, and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) A food authority in England or Wales may institute proceedings under paragraph (3).

### **Enforcement of Parts II and III**

**54.** Except where otherwise specified, each food authority shall enforce and execute Parts II and III within their area.

### **Application of provisions of the Act for the purposes of Parts II and III**

**55.—**(1) The following provisions of the Act shall apply for the purposes of Parts II and III as they apply for the purposes of sections 8, 14 and 15 of the Act, and unless the context otherwise requires, a reference in them to the Act shall for the purposes of Parts II and III be construed as a reference to these Regulations—

- (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 30(8) (which relates to documentary evidence);
- (e) section 33 (obstruction etc. of officers);
- (f) section 34 (time limit for prosecutions);
- (g) section 36 (offences by body corporate), subject to the following modifications—
  - (i) after the words “body corporate”, at the three places where they occur in section 36(1) of the Act, there shall be inserted the words “or Scottish partnership”, and
  - (ii) for the word “secretary” there shall be substituted the words “secretary, partner”;
- (h) section 44 (protection of officers acting in good faith).

(2) Section 6(3) of the Act (discharge of duties of food authorities by Ministers) shall apply as respects functions imposed on food authorities under Parts II and III as it does as respects a duty imposed on a food authority by section 6(2) of the Act.

(3) Section 32 of the Act (powers of entry) shall apply for the purposes of Parts II and III as though—

- (a) any reference to premises included a reference to a fishing vessel, a factory vessel or any vessel used for the transporting of live shellfish to a relaying area or dispatch or purification centre (in so far as it does not already do so);
- (b) and any reference to an occupier included a reference to the master or other person in charge of a vessel mentioned in sub-paragraph (a) (in so far as it does not already do so).

(4) Section 58(1) of the Act (territorial waters and continental shelf) shall apply for the purposes of Parts II and III as it applies for the purposes of the Act.

### **Enforcement of Part IV**

**56.** For the purposes of the Products of Animal Origin (Import and Export) Regulations 1996<sup>(1)</sup> (in this paragraph referred to as “the Import and Export Regulations”)—

- (a) the conditions set out in Part IV shall be treated as health conditions (whether or not they are health conditions as defined in the Import and Export Regulations); and
- (b) those conditions shall be enforced as health conditions—
  - (i) by a local authority or the Minister (or by an authorised officer of the local authority or the Minister), which ever has the responsibility under the Import and Export

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(1) S.I.1996/3124; there are no relevant amending instruments.

Regulations for enforcing health conditions in the particular circumstances of the case,

- (ii) in accordance with the procedures set out in the Import and Export Regulations, and
- (iii) subject to the penalties and other sanctions set out in the Import and Export Regulations.

### **Food treated as failing to comply with food safety requirements**

**57.**—(1) A food authority may certify any fishery products or live shellfish in respect of which any applicable requirements of Part II or III are not met as being a food or food source which fails to comply with these Regulations.

(2) Any fishery products or live shellfish which in accordance with paragraph (1) are certified as being a food or food source which fails to comply with these Regulations may be treated for the purpose of section 9 of the Act as failing to comply with food safety requirements.

### **Amendment of other Regulations**

**58.**—(1) After sub-paragraph (h) of paragraph (2) of regulation 3 of the Food Premises (Registration) Regulations 1991(2) there shall be inserted—

“(i) as a dispatch centre, purification centre, factory vessel or fishery products establishment which is approved under, or an auction or wholesale market which is registered under, the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998. unless”.

(2) Regulation 3(2) of the Food Safety (General Food Hygiene) Regulations 1995(3) shall be amended as follows—

(a) sub-paragraphs (a) to (e) shall be omitted; and

(b) after sub-paragraph (m) there shall be inserted the following paragraph—

“(n) the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.”.

(3) Regulation 3 of the Food Safety (Temperature Control) Regulations 1995(4) shall be amended as follows—

(a) paragraph (2)(a) to (e) shall be omitted;

(b) in paragraph (2), after sub-paragraph (l) there shall be inserted the following sub-paragraph—

“(m) the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998.”;

(c) in paragraph (3), for the words from “regulated by” to “unless,” there shall be substituted the words “regulated by Part III of the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998, unless,”.

(4) The Products of Animal Origin (Import and Export) Regulations 1996 shall be amended as follows—

(a) in regulation 1(2)—

(i) the definitions of “bivalve molluscs” and “other shellfish” shall be omitted,

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(2) S.I. 1991/2825; amended by S.I. 1992/2037, 1993/2022, 1994/1029 and 3082, and 1995/539, 540, 1763, 2148 and 3205.

(3) S.I. 1995/1763; as amended by S.I. 1995/3205.

(4) S.I. 1995/2200; as amended by S.I. 1995/3205.

- (ii) in the definition of “fishery products”, for the words “Food Safety (Fishery Products) Regulations 1992” there shall be inserted the words “Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998”, and
- (iii) after the definition of “import” there shall be inserted the following definition—
  - ““live shellfish” has the same meaning as in the Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998;”;
- (b) in each of the following provisions—
  - (i) regulation 21(1),
  - (ii) regulation 22(1),
  - (iii) regulation 23(b) and (c),
  - (iv) regulation 24(3), and
  - (v) regulation 25(3),the words “bivalve molluscs or other” shall be omitted and
- (c) in Schedule 2 for paragraphs 1 to 4 there shall be substituted the following paragraph  
“The Food Safety (Fishery Products and Live Shellfish) (Hygiene) Regulations 1998”.

#### **Revocations and transitional provision**

**59.**—(1) The Regulations specified in column (1) of Schedule 5 are hereby revoked to the extent specified in column (3) of Schedule 5.

(2) Any premises (which includes vessels) recognised immediately before these Regulations come into force as registered or approved by a food authority in accordance with any of the Regulations revoked by paragraph (1) shall be treated as registered or (as the case may be) approved in accordance with and for the purposes of these Regulations.