
EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations revoke and re-enact with some minor changes the Food Hygiene (England) Regulations 2006 (S.I. 2006/14) and certain provisions of the General Food Regulations 2004 (S.I. 2004/3279) as they apply in relation to England.

2. These Regulations provide for the execution and enforcement in England of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ No L31, 1.2.2002, p.1), as read with Commission Implementing Regulation (EU) No 931/2011 on the traceability requirements set by Regulation (EC) No 178/2002 of the European Parliament and of the Council for food of animal origin (OJ No. L242, 20.9.2011, p.2), and with Commission Implementing Regulation (EU) No 208/2013 on traceability requirements for sprouts and seeds intended for the production of sprouts (OJ No. L68, 12.3.2013, p.16), (“Regulation 178/2002”).

3. These Regulations also provide for the execution and enforcement of a number of EU instruments defined (*in regulation 2(1) as read with Schedule 1*) as “the EU Hygiene Regulations”. These are —

- (a) Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs (OJ No. L139, 30.4.2004, p.1), as read with Regulation 2073/2005 and with Commission Regulation (EU) No 210/2013 on the approval of establishments producing sprouts pursuant to Regulation (EC) No 852/2004 of the European Parliament and of the Council;
- (b) Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin (OJ No. L139, 30.4.2004, p.55), as read with Directive 2004/41, Regulation 1688/2005, Regulation 2074/2005, Regulation 1020/2008 and Regulation 1079/2013;
- (c) Regulation (EC) No. 854/2004 of the European Parliament and of the Council laying down specific rules for the organisation of official controls on products of animal origin intended for human consumption (OJ No. L139, 30.4.2004, p.206), as read with Directive 2004/41, Regulation 2074/2005, Regulation 2075/2005, Decision 2006/766, Regulation 1021/2008 and Regulation 1079/2013;
- (d) Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs (OJ No. L338, 22.12.2005, p.1); and
- (e) Commission Regulation (EC) No. 2075/2005 laying down specific rules on official controls for *Trichinella* in meat (OJ No. L338, 22.12.2005, p.60).

4. These Regulations —

- (a) create certain presumptions that, for the purposes of these Regulations, specified food is intended for human consumption (*regulation 3*);
- (b) provide that the Food Standards Agency is the competent authority for the purposes of the EU Hygiene Regulations except where it has delegated competence as provided for in those Regulations, and that for the purposes of certain specified provisions of Regulation 178/2002 is the Food standards Agency and each food authority in its area or district (*regulation 4*);

Status: This is the original version (as it was originally made).

- (c) make provision for the execution of these Regulations, the EU Hygiene Regulations and Regulation 178/2002 (*regulation 5*);
- (d) provide for the following enforcement measures to be available in respect of a food business operator —
 - (i) hygiene improvement notices (*regulation 6*);
 - (ii) hygiene prohibition orders (*regulation 7*);
 - (iii) hygiene emergency prohibition notices and orders (*regulation 8*);
 - (iv) remedial action notices (*regulation 9*), and
 - (v) detention notices (*regulation 10*);
- (e) provide that where the commission of an offence under these Regulations is due to the act or default of another person, that other person commits the offence (*regulation 11*);
- (f) provide that in any proceedings for an offence under these Regulations it is a defence for the accused to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence (*regulation 12*);
- (g) provide for defences in relation to food that is non-compliant with food law but is destined for export (*regulation 13*);
- (h) provide for the procurement and analysis of samples (*regulations 14 and 15*);
- (i) provide powers of entry for authorised officers of a food authority or the Food Standards Agency (*regulation 16*);
- (j) create the offence of obstructing an officer (*regulation 17*);
- (k) provide a time limit for bringing prosecutions (*regulation 18*);
- (l) provide that anyone who contravenes or fails to comply with specified EU provisions commits an offence (*regulation 19(1) and Schedule 2*);
- (m) provide penalties for offences (*regulation 19(2) and (3)*);
- (n) provide that in relation to certain potential contraventions, no offence is committed provided certain conditions are met (*regulation 19(4) to (8) and Schedules 3 and 7*);
- (o) provide that where an offence is committed by a corporate body or a Scottish partnership, officers of that body or partners of that partnership may be deemed to have also committed the offence (*regulations 20 and 21*);
- (p) provide a right of appeal against a decision of an officer of an enforcement authority —
 - (i) to serve a hygiene improvement notice or a remedial action notice, or
 - (ii) to refuse to issue a certificate to the effect that the health risk condition no longer exists in relation to the food business concerned (*regulation 22*);
- (q) provide for the application, for the purposes of section 9 of the Food Safety Act 1990, but with a specified modification (*regulation 25*);
- (r) provide that the Secretary of State may issue codes of recommended practice to food authorities (*regulation 26*);
- (s) provide for the protection of officers acting in good faith (*regulation 27*);
- (t) provide for the revocation or suspension of the appointment or designation of specified officials (*regulation 28*);
- (u) provide that when an authorised officer of an enforcement authority has certified that any food has not been produced, processed or distributed in accordance with these Regulations and the EU Hygiene Regulations, it is to be treated for the purposes of section 9 of the Food Safety Act 1990 as failing to comply with food safety requirements (*regulation 29*); and

(v) make provision for the service of documents (*regulation 30*).

5. These Regulations, (*at regulations 31 to 35*) provide that the requirements in the following Schedules have effect —

- (a) Schedule 3 (bulk transport in sea-going vessels of liquid oils or fats and the bulk transport by sea of raw sugar);
- (b) Schedule 4 (temperature control requirements);
- (c) Schedule 5 (the direct supply by the producer of small quantities of meat from poultry or lagomorphs slaughtered on the farm);
- (d) Schedule 6 (restrictions on the sale of raw milk intended for direct human consumption); and
- (e) Schedule 8 (the special health mark to be applied in the case of animals that have undergone emergency slaughter).

6. These Regulations also —

- (a) make a consequential amendment (which extends to Great Britain but applies in England only) to the Food Safety Act 1990 (*regulation 36*);
- (b) amend the Official Feed and Food Controls (England) Regulations 2009 ([S.I. 2009/3255](#)) in order to enforce new EU requirements relating to sprouting seeds (*regulation 37*);
- (c) make consequential amendments to the Animal By-Products (Enforcement) (England) Regulations 2013 and the Trade in Animals and Related Products Regulations 2011 (*regulations 38 and 39*);
- (d) revoke specified legislation (*regulation 40 and Schedule 9*); and
- (e) provide that the Food Standards Agency must carry out a periodic review of the operation and effect of these Regulations (*regulation 41*).

7. A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Food Safety Group of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH and is annexed to the Explanatory Memorandum which is available at www.legislation.gov.uk.