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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 415**

**FOOD**

**The Novel Foods (Scotland) Regulations 2017**

*Made* - - - - 23rd November 2017  
*Laid before the Scottish Parliament* - - - - 24th November 2017  
*Coming into force* - - 1st January 2018

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 6(4), 16(1), 17(1) and (2), 18(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990(1), section 2(2) of the European Communities Act 1972(2) and all other powers enabling them to do so.

In accordance with section 48(4A) and (6) of that Act, the Scottish Ministers have had regard to relevant advice given by Food Standards Scotland(3).

There has been consultation as required by Article 9 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(4).

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- (1) 1990 c.16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Section 6(4) was amended by paragraph 6 of schedule 9 of the Deregulation and Contracting Out Act 1994 (c.40), paragraph 10(3) of schedule 5 of the Food Standards Act 1999 (c.28) (“the 1999 Act”) and S.I. 2002/794. Section 6(4A) was inserted by paragraph 3(2) of the schedule of the Food (Scotland) Act 2015 (asp 1) (“the 2015 Act”). Section 16(1)(da) was inserted by section 34(1) of the 2015 Act. Sections 17(1), 31(1) and 48(1) were amended by paragraph 8 of schedule 5 of the 1999 Act. Section 17(1) was also amended by paragraph 12(a) of schedule 5 of the 1999 Act and S.I. 2011/1043. Section 26(3) was amended by paragraph 1 of schedule 6 of the 1999 Act. Section 48(4) is disapplied in respect of these Regulations by virtue of section 48(4C) which was inserted by S.I. 2004/2990. By virtue of section 40(2) of the 1999 Act, amendments made by schedule 5 of that Act are to be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) (“the 1998 Act”). The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not transferred, and in so far as relating to food (including drink) including the primary production of food, relevant functions were transferred to the Scottish Ministers by S.I. 2005/849.
- (2) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46) (“the 1998 Act”), section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The functions conferred on the Minister of the Crown under section 2(2) of the 1972 Act so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
- (3) Section 48(4A) was inserted by paragraphs 7 and 21 of schedule 5 of the 1999 Act. Section 48(6) was inserted by paragraph 3(11) of the schedule of the 2015 Act.
- (4) OJ L 31, 1.2.2002, p.1, last amended by Regulation (EU) 652/2014 of the European Parliament and of the Council (OJ L 189, 27.6.2014, p.1).

## **Citation and commencement**

1. These Regulations may be cited as the Novel Foods (Scotland) Regulations 2017 and come into force on 1st January 2018.

## **Interpretation**

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

“Regulation (EU) 2015/2283” means Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25th November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001<sup>(5)</sup>;

“authorised officer” means any person (whether or not an officer of the food authority) who is authorised by a food authority in writing, either generally or specially, to act in matters arising under these Regulations and Regulation (EU) 2015/2283;

“food authority” has the same meaning as set out in section 5(2) of the Act<sup>(6)</sup>.

(2) Any reference in these Regulations to an Article is a reference to an Article of Regulation (EU) 2015/2283.

(3) Unless the contrary intention appears, any expression used both in these Regulations and Regulation (EU) 2015/2283 has the meaning that it bears in Regulation (EU) 2015/2283.

## **Enforcement**

3. It is the duty of a food authority within its area to enforce these Regulations and Regulation (EU) 2015/2283.

## **Offence and penalty**

4. A person who contravenes or fails to comply with either Article 6(2) (as read with Articles 24 and 35(2)), or Article 25 is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **Application of various provisions of the Act**

5.—(1) The following provisions of the Act apply for the purpose of these Regulations with the modification that any reference in those provisions to the Act or Part of it is to be construed as a reference to these Regulations and any reference to an enforcement authority is to be construed as a reference to a food authority—

- (a) section 2 (extended meaning of sale etc);
- (b) section 20 (offences due to the fault of another person);
- (c) section 21 (defence of due diligence);
- (d) section 22 (defence of publication in the course of business);
- (e) section 32 (powers of entry);
- (f) section 36 (offences by bodies corporate);

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<sup>(5)</sup> OJ L 327, 11.12.2015, p.1.

<sup>(6)</sup> Section 5(2) of the Act was amended by, paragraph 163(2) of Schedule 13 of the Local Government etc (Scotland) Act 1994 (c.39).

- (g) section 36A (offences by Scottish partnerships);
- (h) section 44 (protection of officers acting in good faith);
- (i) section 49 (form and authentication of documents); and
- (j) section 50 (service of documents).

(2) Section 9 of the Act (inspection and seizure of suspected food) applies for the purposes of these Regulations as if it read as follows—

“(1) An authorised officer of a food authority may at all reasonable times inspect any food for human consumption which—

- (a) has been sold or is offered or exposed for sale;
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or preparation for sale; or
- (c) is otherwise placed on the market within the meaning of Regulation (EC) 178/2002.

and subsections (2) to (8) below shall apply where, on such an inspection or otherwise, it appears to the authorised officer that Article 6(2) of Regulation (EU) 2015/2283 is being, or has been, contravened in relation to any novel food.

(2) The authorised officer may either—

- (a) give notice to the person in charge of the novel food that, until the notice is withdrawn, the novel food—
  - (i) is not to be used for human consumption; and
  - (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or
- (b) seize the novel food and remove it in order to have it dealt with by a sheriff;

and any person who knowingly contravenes the requirements of a notice under paragraph (a) above is guilty of an offence.

(3) Where the authorised officer exercises the powers conferred by subsection (2)(a) above, the authorised officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not they are satisfied that the food complies with Article 6(2) of Regulation (EU) 2015/2283 and—

- (a) if so satisfied, immediately withdraw the notice;
- (b) if not so satisfied, seize the novel food and remove it in order to have it dealt with by a sheriff.

(4) Where an authorised officer exercises the powers conferred by subsection (2)(b) or (3)(b) above, the authorised officer shall inform the person in charge of the novel food that it is to be dealt with by a sheriff and any person who might be liable to a prosecution in respect of the novel food shall, if attending before the sheriff by whom the food falls to be dealt with, be entitled to be heard and to call witnesses.

(5) If it appears to a sheriff, on the basis of such evidence as the sheriff considers appropriate in the circumstances, that any novel food falling to be dealt with under this section is not on the Union list of authorised novel foods as established by Article 6 of Regulation (EU) 2015/2283, the sheriff shall condemn the novel food and order—

- (a) the novel food to be destroyed or to be so disposed of as to prevent it from being used for human consumption; and
- (b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the novel food.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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(6) Any order made under subsection (5) shall be sufficient evidence in any proceedings under this Act of a contravention of Article 6(2) of Regulation (EU) 2015/2283.

(7) If a notice under subsection (2)(a) above is withdrawn, or the sheriff by whom any novel food falls to be dealt with under this section refuses to condemn it, the food authority shall compensate the owner of the novel food for any depreciation in its value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under subsection (7) above shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.”

### **Revocation**

**6.** The Novel Foods and Novel Food Ingredients Regulations 1997(7) and the Novel Foods and Novel Food Ingredients (Fees) Regulations 1997(8) are revoked in relation to Scotland.

St Andrew’s House,Edinburgh  
23rd November 2017

*AILEEN CAMPBELL*  
Authorised to sign by the Scottish Ministers

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(7) S.I. 1997/1335.  
(8) S.I. 1997/1336.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the enforcement and execution of certain specified provisions of Regulation (EU) 2015/2283 of the European Parliament and of the Council amending Regulation (EU) 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) 258/97 of the European Parliament and of the Council and Commission Regulation (EC) 1852/2001.

Regulation (EU) 2015/2283 revises the requirements for placing novel foods on the market. The requirements have been updated in accordance with technical and scientific progress and include an updated definition of what constitutes a “novel food” and the European Commission will establish a European Union list of approved novel foods. Food business operators must verify that the food they intend to put on the market falls within the scope of Regulation (EU) 2015/2283 and, where they are unsure, they are under an obligation to consult the Member State where they first intend to place the food on the market.

Regulation 3 makes food authorities responsible for the enforcement of these Regulations.

Regulation 4 provides for offences and penalties.

Regulation 5 applies specified provisions of the Food Safety Act 1990 (1990 c.16) (with modifications) to these Regulations.

Regulation 6 revokes the Novel Foods and Novel Food Ingredients Regulations 1997 (S.I. 1997/1335) and the Novel Foods and Novel Food Ingredients (Fees) Regulations 1997 (S.I. 1997/1336) in relation to Scotland.

A full business and regulatory impact assessment of the effect these Regulations will have on the costs for the business sector has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from Food Standards Scotland, Pilgrim House, Old Ford Road, Aberdeen, AB11 5RL.