

2012 No. 1742

FOOD, ENGLAND

The Food Hygiene (England) (Amendment) Regulations 2012

Made - - - - *2nd July 2012*

Laid before Parliament *6th July 2012*

Coming into force - - *30th July 2012*

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by section 2(2) of and paragraph 1A of Schedule 2 to the European Communities Act 1972(a).

The Secretary of State has been designated for the purposes of that section in relation to measures relating to food (including drink) including the primary production of food(b).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for any reference to an EU instrument defined in Schedule 1 to be construed in accordance with regulation 2(3) as a reference to that instrument as amended from time to time.

In so far as these Regulations cannot be made under powers in the European Communities Act 1972, the Secretary of State makes these Regulations in exercise of the powers conferred by section 48(1) of the Food Safety Act 1990(c) and now vested in him(d). In accordance with section 48(4A) of that Act he has had regard to relevant advice given by the Food Standards Agency.

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(e) there

(a) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51) and has been amended by section 3(3) of and the Schedule to the European Union (Amendment) Act 2008 (2008 c.7).

(b) S.I. 2003/2901.

(c) 1990 c.16.

(d) Functions formerly exercisable by "the Ministers" (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the Food Standards Act 1999 (1999 c. 28). Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32).. Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46) as read with section 40(2) of the 1999 Act.

(e) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council

has been open and transparent public consultation during the preparation of the following Regulations.

Title and commencement

1. These Regulations may be cited as the Food Hygiene (England) (Amendment) Regulations 2012 and come into force on 30th July 2012.

Amendments to the Food Hygiene (England) Regulations 2006

2.—(1) The Food Hygiene (England) Regulations 2006(a) are amended in accordance with paragraphs (2) to (6).

(2) In paragraph (1) of regulation 2 (interpretation) for the references to the EU instruments appearing immediately after the definition of “the Community Regulations” substitute the following references —

““Decision 2006/766”, “Decision 2011/131”, “Directive 2004/41”, “Regulation 178/2002”, “Regulation 852/2004”, “Regulation 853/2004”, “Regulation 854/2004”, “Regulation 882/2004”, “Regulation 1688/2005”, “Regulation 2073/2005”, “Regulation 2074/2005”, “Regulation 2075/2005”, “Regulation 1020/2008”, “Regulation 1021/2008”, “Regulation 219/2009”, “Regulation 596/2009”, “Regulation 669/2009”, “Regulation 1162/2009”, “Regulation 739/2011”, “Regulation 809/2011”, “Regulation 880/2011”, “Regulation 1086/2011”, “Regulation 1109/2011”, “Regulation 1169/2011”, “Regulation 1223/2011”, “Regulation 1277/2011”, “Regulation 16/2012” and “Regulation 28/2012” have the meanings respectively given to them in Schedule 1;”.

(3) Immediately after paragraph (5) of regulation 2 insert the following paragraph —

“(6) In these Regulations, any reference to an EU instrument defined in Schedule 1 is a reference to that instrument as any annex to it may be amended from time to time.”.

(4) Immediately after regulation 32 (restrictions on the sale of raw milk intended for direct human consumption) insert the following regulation —

“Special health mark

32A. The special health mark referred to in paragraph 9 of Chapter VI of Section I of Annex III to Regulation 853/2004 and paragraph 7 of Chapter III of Section I of Annex I to Regulation 854/2004 shall conform with Schedule 6A.”.

(5) For Schedule 1 (definitions of EU legislation) substitute the Schedule set out in Schedule 1 to these Regulations.

(6) Immediately after Schedule 6 (restrictions on the sale of raw milk intended for direct human consumption) insert the Schedule set out in Schedule 2 to these Regulations.

Review

3.—(1) The Food Standards Agency must from time to time —

- (a) carry out a review of the operation and effect of regulation 2;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Agency must, so far as is reasonable, have regard to how the EU instruments mentioned in paragraph (2) as read with paragraph (3) of regulation 2 are executed and enforced in other Member States.

Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny- Part Four (OJ No. L188, 18.7.2009, p.14).

(a) S.I. 2006/14, amended by S.I. 2007/56 and S.I. 2010/534.

- (3) The report must in particular —
- (a) set out the objectives intended to be achieved by the regulatory changes to the Food Hygiene (England) Regulations 2006 made by these Regulations;
 - (b) assess the extent to which those objectives are achieved; and
 - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Signed by authority of the Secretary of State for Health.

2nd July 2012

Anne Milton
Parliamentary Under Secretary of State,
Department of Health

SCHEDULE 1

Regulation 2(5)

SCHEDULE SUBSTITUTED FOR SCHEDULE 1 TO THE FOOD HYGIENE (ENGLAND) REGULATIONS 2006

“SCHEDULE 1

Regulation 2(1)

DEFINITIONS OF EU LEGISLATION

<p>“Decision 2006/766” means Commission Decision 2006/766/EC establishing the lists of third countries and territories from which imports of bivalve molluscs, echinoderms, tunicates, marine gastropods and fishery products are permitted(a) as last amended by Decision 2011/131;</p>
<p>“Decision 2011/131” means Commission Decision 2011/131/EU amending Annexe II to Decision 2006/766/EC as regards the inclusion of Fiji in the list of third countries and territories from which imports of fishery products for human consumption are permitted(b);</p>
<p>“Directive 2004/41” means Directive 2004/41/EC of the European Parliament and of the Council repealing certain directives concerning food hygiene and health conditions for the production and placing on the market of certain products of animal origin intended for human consumption and amending Council Directives 89/662/EEC and 92/118/EEC and Council Decision 95/408/EC(c);</p>
<p>“Regulation 178/2002” means 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 as last amended by Regulation 596/2009;</p>
<p>“Regulation 852/2004” means Regulation (EC) No. 852/2004 of the European Parliament and of the Council on the hygiene of foodstuffs(d) as last amended by Regulation 219/2009 and as read with Regulation 2073/2005;</p>
<p>“Regulation 853/2004” means Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin(e) as last amended by Regulation 16/2012 and as read with Directive 2004/41, Regulation 1688/2005, Regulation 2074/2005, Regulation 1020/2008 and Regulation 1162/2009;</p>
<p>“Regulation 854/2004” means 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(f) as last amended by Regulation 739/2011 and as read with Directive 2004/41, Regulation 2074/2005, Regulation 2075/2005, Decision 2006/766, Regulation 1021/2008 and Regulation 1162/2009;</p>
<p>“Regulation 882/2004” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(g) as last amended by Regulation 880/2011 and as read with Regulation 2074/2005, Regulation 669/2009 and Regulation 1162/2009;</p>
<p>“Regulation 1688/2005” means Commission Regulation (EC) No. 1688/2005 implementing Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards special</p>

(a) OJ No. L320, 18.11.2006, p.53.

(b) OJ No. L53, 26.2.2011, p.73.

(c) OJ No. L157, 30.4.2004, p.33. The revised text of Directive 2004/41/EC is now set out in a Corrigendum (OJ No. L195, 2.6.2004, p.12).

(d) OJ No. L139, 30.4.2004, p.1. The revised text of Regulation (EC) No. 852/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.3) which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.26).

(e) OJ No. L139, 30.4.2004, p.55. The revised text of Regulation (EC) No. 853/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.22) which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.26).

(f) OJ No. L139, 30.4.2004, p.206. The revised text of Regulation (EC) No. 854/2004 is now set out in a Corrigendum (OJ No. L226, 25.6.2004, p.83) which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.26).

(g) OJ No. L165, 30.4.2004, p.1. The revised text of Regulation (EC) No. 882/2004 is now set out in a Corrigendum (OJ No. L191, 28.5.2004, p.1) which should be read with a further Corrigendum (OJ No. L204, 4.8.2007, p.29).

guarantees concerning salmonella for consignments to Finland and Sweden of certain meat and eggs(a) as last amended by Regulation 1223/2011;
“Regulation 2073/2005” means Commission Regulation (EC) No. 2073/2005 on microbiological criteria for foodstuffs(b) as last amended by Regulation 1086/2011;
“Regulation 2074/2005” means Commission Regulation (EC) No. 2074/2005 laying down implementing measures for certain products under Regulation (EC) No. 853/2004 of the European Parliament and of the Council and for the organisation of official controls under Regulation (EC) No. 854/2004 of the European Parliament and of the Council and Regulation (EC) No. 882/2004 of the European Parliament and of the Council, derogating from Regulation (EC) No. 852/2004 of the European Parliament and of the Council and amending Regulations (EC) No. 853/2004 and (EC) No. 854/2004(c) as last amended by Regulation 809/2011;
“Regulation 2075/2005” means Commission Regulation (EC) No. 2075/2005 laying down specific rules on official controls for <i>Trichinella</i> in meat(d) as last amended by Regulation 1109/2011;
“Regulation 1020/2008” means Commission Regulation (EC) No. 1020/2008 amending Annexes II and III to Regulation (EC) No. 853/2004 of the European Parliament and of the Council laying down specific hygiene rules for food of animal origin and Regulation (EC) No. 2076/2005 as regards identification marking, raw milk and dairy products, eggs and egg products and certain fishery products(e);
“Regulation 1021/2008” means Commission Regulation (EC) No. 1021/2008 amending Annexes I, II and III to 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 and Regulation (EC) No. 2076/2005 as regards live bivalve molluscs, certain fishery products and staff assisting with official controls in slaughterhouses(f);
“Regulation 219/2009” means Regulation (EC) No. 219/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Two(g);
“Regulation 596/2009” means Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four(h) as last amended by Regulation 1169/2011;
“Regulation 669/2009” means Commission Regulation (EC) No. 669/2009 implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC(i) as last amended by Regulation 1277/2011;
“Regulation 1162/2009” means Commission Regulation (EC) No. 1162/2009 laying down transitional measures for the implementation of Regulations (EC) No. 853/2004, (EC) No. 854/2004 and (EC) No. 882/2004 of the European Parliament and of the Council(j) as last amended by Regulation 28/2012 and as read with the second sub-paragraph of Article 54(3) of Regulation 1169/2011 ;
“Regulation 739/2011” means Commission Implementing Regulation (EU) No. 739/2011 amending Annex I to 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(k);

(a) OJ No. L271, 15.10.2005, p.17.

(b) OJ No. L338, 22.12.2005, p.1, as read with the Corrigenda at OJ No. L278, 10.10.2006, p.32 and OJ No. L283, 14.10.2006, p.62.

(c) OJ No. L338, 22.12.2005, p.27.

(d) OJ No. L338, 22.12.2005, p.60.

(e) OJ No. L277, 18.10.2008, p.8.

(f) OJ No. L277, 18.10.2008, p.15.

(g) OJ No. L87, 31.3.2009, p.109.

(h) OJ No. L188, 18.7.2009, p.14.

(i) OJ No. L194, 25.7.2009, p.11.

(j) OJ No. L314, 1.12.2009, p.10.

(k) OJ No. 196, 28.7.2011, p.3.

<p>“Regulation 809/2011” means Commission Implementing Regulation (EU) No. 809/2011 amending Regulation (EC) No. 2074/2005 as regards documentation accompanying imports of frozen fishery products directly from a freezer vessel(a);</p>
<p>“Regulation 880/2011” means Commission Regulation (EU) No. 880/2011 correcting Regulation (EU) No 208/2011 amending Annex VII to Regulation (EC) No 882/2004 of the European Parliament and of the Council and Commission Regulations (EC) No 180/2008 and (EC) No 737/2008 as regards lists and names of EU reference laboratories(b);</p>
<p>“Regulation 1086/2011” means Commission Regulation (EU) No. 1086/2011 amending Annex II to Regulation (EC) No. 2160/2003 of the European Parliament and of the Council and Annex I to Commission Regulation (EC) No. 2073/2005 as regards <i>salmonella</i> in fresh poultry meat(c);</p>
<p>“Regulation 1109/2011” means Commission Implementing Regulation (EU) No. 1109/2011 amending Annex I to Regulation (EC) No. 2075/2005 as regards the equivalent methods for <i>Trichinella</i> testing(d);</p>
<p>“Regulation 1169/2011” means 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(e);</p>
<p>“Regulation 1223/2011” means Commission Implementing Regulation (EU) No 1223/2011 amending Regulation (EC) No 1688/2005 as regards sampling of flocks of origin of eggs and the microbiological examination of such samples and samples of certain meat intended for Finland and Sweden(f);</p>
<p>“Regulation 1277/2011” means Commission Implementing Regulation (EU) No 1277/2011 amending Annex I to Regulation (EC) No 669/2009 implementing Regulation (EC) No 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin(g);</p>
<p>“Regulation 16/2012” means Commission Regulation (EU) No. 16/2012 amending Annex II to Regulation (EC) No. 853/2004 of the European Parliament and of the Council as regards the requirements concerning frozen food of animal origin intended for human consumption(h);</p>
<p>“Regulation 28/2012” means Commission Regulation (EU) No 28/2012 laying down requirements for the certification for imports into and transit through the Union of certain composite products and amending Decision 2007/275/EC and Regulation (EC) No 1162/2009(i).”</p>

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- (a) OJ No. L207, 12.8.2011, p.1.
(b) OJ No. L228, 3.9.2011, p.8.
(c) OJ No. L281, 28.10.2011, p.7.
(d) OJ No. L287, 4.11.2011, p.23.
(e) OJ No. L304, 22.11.2011, p.18.
(f) OJ No. L314, 29.11.2011, p.12.
(g) OJ No. L327, 19.12.2011, p.42.
(h) OJ No. L8, 12.1.2012, p.29.
(i) OJ No. L12, 14.1.2012, p.1.

SCHEDULE 2

Regulation 2(6)

SCHEDULE TO BE INSERTED IMMEDIATELY AFTER SCHEDULE 6 TO THE FOOD HYGIENE (ENGLAND) REGULATIONS 2006

“SCHEDULE 6A

Regulation 32A

THE SPECIAL HEALTH MARK

1. The special health mark shall consist of a square mark containing in legible form the following characters:

- on the upper part, the letters “UK”;
- in the centre, the approval number of the premises; and
- on the lower part, the letter “N”.

2. When applied to carcasses, the special health mark shall measure 5.5 cm by 5.5 cm and contain letters 0.8 cm high and figures 1 cm high. The dimensions and characters of the mark may be reduced for health marking of lamb, kids and piglets.”

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations amend the Food Hygiene (England) Regulations 2006 (S.I. 2006/14 as already amended) (“the 2006 Regulations”) by updating the definitions of certain EU instruments that are referred to in those Regulations and providing that a reference to those EU instruments is to be a reference to them as any annex to them may be amended from time to time.

2. These Regulations amend the 2006 Regulations to update the definitions of certain EU instruments by —

- (a) substituting definitions of certain EU instruments for the definitions of the EU instruments that currently appear after the definition of “the Community Regulations” in regulation 2(1) (interpretation) (*regulation 2(2)*);
- (b) adding a provision that any reference to an EU instrument defined in Schedule 1 is a reference to that instrument as any annex to it may be amended from time to time (*regulation 2(3)*); and
- (c) substituting a revised Schedule 1 (definitions of EU legislation) for the existing Schedule 1 (*regulation 2(5)*).

3. In addition these Regulations specify the form and size of the special health mark to be applied to meat derived from animals that have undergone emergency slaughter outside the slaughterhouse (*regulation 2(4) and (6) and Schedule 2*).

4. These Regulations require the Food Standards Agency to review the operation and effect of regulation 2 and publish a report within 5 years of the Regulations coming into force and within every 5 years after that. Following a review it will fall to the Secretary of State, having taken advice from the Food Standards Agency, to consider whether the regulatory matters introduced by these Regulations should remain as they are or be amended or revoked (*regulation 3*). A further instrument would be needed to revoke or amend the Regulations.

5. 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.

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