Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Eggs (Marketing Standards) (Enforcement) (Scotland) Regulations 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCOTTISH STATUTORY INSTRUMENTS

2005 No. 332

FOOD

The Eggs (Marketing Standards) (Enforcement) (Scotland) Regulations 2005

Made - - - -	*8th June 2005*
Laid before the Scottish Parliament - - - -	*9th June 2005*
Coming into force - -	*1st July 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(b), (d), (e) and (f), (2) and (3), 17(1) and (2), 19(1)(a), 26(1)(a), (2)(a), (b), (c), (e) and (f), (3), 48(1) and paragraphs 5 and 7 of Schedule 1 to the Food Safety Act 1990, having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency(**1**) and in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**2**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Eggs (Marketing Standards) (Enforcement) (Scotland) Regulations 2005 and shall come into force on 1st July 2005.

(2) These Regulations shall extend to Scotland only.

(**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 the Deregulation and Contracting Out Act 1994 (c. 40), Schedule 9, paragraph 6 and by the Food Standards Act 1999 (c. 28) ("the 1999 Act"), Schedule 5, paragraph 10(3); sections 16(1) and (2), 19(1) and 48(1) were amended by the 1999 Act, section 40(1) and Schedule 5, paragraph 8, section 17(1) and (2) was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 12, section 26(3) was amended by the 1999 Act, section 40(4) and Schedule 6. Section 48(4A) was inserted by section 40(1) and paragraph 21 of Schedule 5 to the 1999 Act. Amendments made by Schedule 5 to the 1999 Act shall be taken as pre commencement enactments for the purposes of the Scotland Act 1998 (c. 46) by virtue of section 40(2) of the 1999 Act, section 48(4) is disapplied in respect of these regulations by virtue of section 48(4C), inserted by S.I. 2004/2990. The functions of the Secretary of State, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. In so far as not transferred those functions under sections 6(4), 16(1), 17, 26 and 48(1) were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).

(**2**) 1972 c. 68; section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The functions conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

Commencement Information
I1 Reg. 1 in force at 1.7.2005, see **reg. 1(1)**

Interpretation

2.—(1) In these Regulations–

"the Act" means the Food Safety Act 1990;

"the Agency" means the Food Standards Agency;

"authorised officer", in relation to an enforcement authority, means any person, (whether or not an officer of the authority) who is authorised by the authority in writing, either generally or specially, to act in matters arising under these Regulations;

"Council Decision 94/371/EC" means Council Decision 94/371/EC(**3**) laying down specific public health conditions for the putting on the market of certain types of eggs;

"enforcement authority" means an authority exercising a function conferred on the authority by regulation 4;

"sale" includes supply of food otherwise than on sale, in the course of a business, possession for sale and offer, exposure and advertisement for sale;

"specified Community provision" means–

(a) a provision of a Regulation of the European Community referred to in column 1 of Schedule 1 to these Regulations, which is specified in column 2 and the subject matter of which is described in column 3 of that Schedule opposite the reference in Column 1; and

(b) any provision of the Council Decision 94/371/EC specified in regulation 3,

and "the specified community provisions" shall be construed accordingly.

(2) Other expressions used in these Regulations and in any specified Community provision have the same meaning in these Regulations as they bear in that provision unless the context requires otherwise.

Commencement Information
I2 Reg. 2 in force at 1.7.2005, see **reg. 1(1)**

Requirements under the Council Decision

3. Any person carrying on an activity regulated by Article 2, 3(1) or (2), 4 or 5 of the Council Decision 94/371/EC shall comply with that provision.

Commencement Information
I3 Reg. 3 in force at 1.7.2005, see **reg. 1(1)**

Enforcement authorities

4.—(1) Each food authority within its area shall, and the Scottish Ministers may, execute and enforce any specified Community provision which relates to the sale of eggs by a retailer.

(**3**) O.J. No. L 168, 2.7.1994, p.34.

(2) Each food authority within its area shall execute and enforce any specified Community provision which relates to the use of eggs as described in Article 5 of the Council Decision 94/371/EC.

(3) In so far as any specified Community provision does not relate to either of the matters referred to in paragraphs (1) or (2)–

(a) the Scottish Ministers shall execute and enforce those covered by paragraph (a) of the definition of "specified Community provision" in regulation 2; and

(b) the Agency shall execute and enforce those covered by paragraph (b) of that definition with the exception of Article 5 of the Council Decision 94/371/EC.

Commencement Information

I4 Reg. 4 in force at 1.7.2005, see **reg. 1(1)**

Requirements relating to the enforcement of any specified Community provision

5. An authorised officer of an enforcement authority, on producing if so required a duly authenticated document showing the authority of the officer, may–

(a) require a person not to remove any eggs, or cause them to be removed, from any land or premises for such period as the officer may reasonably specify as being necessary for the purpose of the inspection by that officer of those eggs;

(b) require a person to ensure that any container of eggs which does not comply in any respect with the requirements of any specified Community provision whether in relation to eggs contained in it or otherwise, complies with those requirements before it is removed from any land or premises, except as may be otherwise directed by an authorised officer.

Commencement Information

I5 Reg. 5 in force at 1.7.2005, see **reg. 1(1)**

Open air runs

6. Pursuant to the second indented point of paragraph 1(a) of Annex III to Commission Regulation (EC) No. 2295/2003 as amended(**4**), the Scottish Ministers authorise livestock grazing on open air runs to which that provision applies.

Commencement Information

I6 Reg. 6 in force at 1.7.2005, see **reg. 1(1)**

Establishments producing free range and barn eggs

7. Pursuant to paragraph 3 of Annex III to Commission Regulation (EC) No. 2295/2003, the Scottish Ministers authorise the production of eggs to which point 1(a) or (b) of the Annex applies in establishments to which paragraph 3 applies and which do not comply with the obligations referred to in the second sentence of point 1(d) and point 1(e) of Article 4 of Council Directive 1999/74/

(**4**) O.J. No. L 340, 24.12.2003; p.16 as amended by Commission Regulation (EC) No. 818/2004, O.J. No. L 153, 30.4.2004, p.82 and Commission Regulation (EC) No. 1515/2004, O.J. No. L 278, 27.8.2004, p.7.

EC(**5**) as amended, in the case of free range hens and points 2 and 3(a)(i) and 3(b)(i) of Article 4(1) of that Directive.

Commencement Information
I7 Reg. 7 in force at 1.7.2005, see **reg. 1(1)**

Marking of eggs for hatching

8. For the purposes of Article 2(2) of Commission Regulation (EEC) No. 1868/77 as amended(**6**), eggs for hatching may be marked in a different manner from that specified in Article 2(1) of that Regulation if such marking is–

(a) in black;

(b) indelible;

(c) clearly visible;

(d) at least $10mm^2$ in area,

and is carried out prior to the insertion of the eggs into an incubator at a producer establishment or hatchery.

Commencement Information
I8 Reg. 8 in force at 1.7.2005, see **reg. 1(1)**

Registration authority

9. The Scottish Ministers shall act as the registration authority for the purposes of Article 3 of Regulation (EEC) No. 2782/75(**7**) of the Council as amended on the production and marketing of eggs for hatching and of farmyard poultry chicks.

Commencement Information
I9 Reg. 9 in force at 1.7.2005, see **reg. 1(1)**

Keeping of records

10. An enforcement authority may serve a notice in writing on a person carrying on any activity regulated by a specified Community provision requiring that person to–

(a) keep or cause to be kept such records as the enforcement authority may reasonably require for the purposes of executing or enforcing any such provision;

(**5**) O.J. No. L 203, 3.8.1999, p.53 as amended by Council Regulation (EC) No. 806/2003; O.J. No. L 122, 16.5.2003, p.1.
(**6**) O.J. No. L 209, 17.8.1977, p.1, as amended by Commission Regulation (EEC) No. 3759/85, O.J. No. L 356, 31.12.1985, p.64, Commission Regulation (EEC) No. 1351/87, O.J. No. L 127, 16.5.1987, p.18, Commission Regulation (EEC) No. 2773/90, O.J. No. L 267, 29.9.1990, p.25, Commission Regulation (EC) No. 3239/94, O.J. No. L 338, 28.12.1994, p.48.
(**7**) O.J. No. L 282, 1.11.1975, p.100, as amended by Council Regulation (EEC) No. 3485/80 O.J. No. L 365, 31.12.1980, p.1, Council Regulation (EEC) No. 3791/85, O.J. No. L 367, 31.12.1985, p.6, Council Regulation (EEC) No. 3494/86, O.J. No. L 323, 18.11.1986, p.1, Commission Regulation (EEC) No. 3987/87, O.J. No. L 376, 31.12.1987, p.20, Commission Regulation (EEC) No. 1057/91, O.J. No. L 107, 27.4.1991, p.11, and Commission Regulation (EC) No. 2916/95, O.J. No. L 305, 19.12.1995, p.49.

(b) provide the enforcement authority with such information derived from such records as the enforcement authority may from time to time require;

(c) provide the enforcement authority with such records as the enforcement authority may from time to time require; and

(d) retain such records for such period as the enforcement authority may reasonably require.

Commencement Information
I10 Reg. 10 in force at 1.7.2005, see **reg. 1(1)**

Offences and penalty

11. If any person contravenes or fails to comply with–

(a) any specified Community provision; or

(b) any requirement properly imposed on that person under regulation 5 or 10,

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

Commencement Information
I11 Reg. 11 in force at 1.7.2005, see **reg. 1(1)**

Duty to give assistance and provide information

12. Each enforcement authority shall give such assistance and information to any other enforcement authority as that other enforcement authority may reasonably require for the purpose of its duties under these Regulations.

Commencement Information
I12 Reg. 12 in force at 1.7.2005, see **reg. 1(1)**

Appeals

13.—(1) Any person who is aggrieved by a decision of the Scottish Ministers to–

(a) refuse or withdraw a registration of an establishment under Article 3 of Regulation (EEC) No. 2782/75 of the Council; or

(b) refuse or withdraw an authorisation to grade eggs under Article 5 of Council Regulation (EEC) No. 1907/90(**8**) as amended,

may appeal against that decision to the sheriff.

(2) Section 37(4) to (6) of the Act shall have effect in relation to an appeal under this regulation as it has effect in relation to an appeal under that section, but with the omission of–

(**8**) O.J. No. L 173, 6.7.1990, p.5 as amended by Council Regulation (EEC) No. 2617/93, O.J. No. L 240, 25.9.1993, p.1, Council Regulation (EC) No. 3117/94 O.J. No. L 330, 21.12.1994, p.4, Council Regulation (EC) No. 818/96, O.J. No. L 111, 4.5.1996, p.1, Council Regulation (EC) No. 5/2001, O.J. No. L 2, 5.1.2001, p.1, and Council Regulation (EC) No. 2052/2003, O.J. No. L 305, 22.11.2003, p.1.