SCOTTISH STATUTORY INSTRUMENTS

2005 No.215

FOOD

The Smoke Flavourings (Scotland) Regulations 2005

Made - - - - 12th April 2005
Laid before the Scottish Parliament - - - - 13th April 2005

Coming into force in accordance with regulation 1

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

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Smoke Flavourings (Scotland) Regulations 2005.

(2) (a) Regulation 3 and regulations 1 and 2 insofar as they relate to regulation 3, shall come into force on 5th May 2005; and

(b) all other Regulations thereof shall come into force on 16th June 2005.

(3) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Food Safety Act 1990; and

"Regulation 2065/2003" means Regulation (EC) No. 2065/2003 of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods(**3**).

(**1**) 1990 c. 16; section 1(1) and (2) (definition of "food") was substituted by S.I.2004/2990; sections 6(4), 16(1) and 48(1) were amended by the Food Standards Act 1999 (c. 28) ("the 1999 Act"), Schedule 5, paragraph 8; section 17(2) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, Schedule 6; section 48(4) is disapplied in respect of these regulations by virtue of section 48(4C), inserted by S.I. 2004/2990; amendments made by Schedule 5 of 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. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. Insofar as not so transferred, those functions 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**) Section 48(4A) was inserted by the 1999 Act, Schedule 5, paragraph 21.

(**3**) O.J. No. L 309, 26.11.03, p.1.

(2) Other expressions used in these Regulations and in Regulation 2065/2003 have the same meaning in these Regulations as in Regulation 2065/2003 and in these Regulations any reference to a numbered Article or Annex is a reference to the Article or Annex so numbered in Regulation 2065/2003.

Administration of Regulation 2065/2003

3. The national competent authority for the purposes of Article 7 (application for authorisation) shall be the Food Standards Agency.

Condemnation of food

4. Where, in relation to any food (including any primary smoke condensate, primary tar fraction or derived smoke flavouring), a contravention of any of Articles 4.2, 5.1, 5.2, 9.4 or 9.5 has occurred–

(a) that food shall be treated for the purposes of section 9 of the Act as failing to comply with the food safety requirements; and

(b) if that food is part of a batch, lot or consignment of food of the same class or description, it shall be presumed, unless the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

Offences and penalties

5. Any person who contravenes or fails to comply with an Article specified in column 1 (the subject matter of which is described in column 2) of the Schedule to these Regulations shall be 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 Food Safety Act 1990

6. The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in these sections to the Act or any Part thereof is deemed to be a reference to these Regulations and Regulation 2065/2003–

(a) section 3 (presumptions that food is intended for human consumption);

(b) section 20 (offences due to the fault of another person);

(c) section 21 (defence of due diligence) as it applies for the purposes of sections 14 or 15 of that Act;

(d) section 22 (defence of publication in the course of business);

(e) section 30(8) (analysis etc. of samples);

(f) section 33 (obstruction, etc. of officers);

(g) section 35(1) to (3) (punishment of offences) in so far as it relates to offences under section 33(1) and (2) as applied by sub–paragraph (f);

(h) section 36 (offences by bodies corporate);

(i) section 36A (offences by Scottish partnerships); and

(j) section 44 (protection of officers acting in good faith).

Enforcement

7. Each food authority shall enforce and execute these Regulations within its area.