STATUTORY INSTRUMENTS

2018 No. 154

FOOD, ENGLAND

The Novel Foods (England) Regulations 2018

Made - - - -	*6th February 2018*
Laid before Parliament	*8th February 2018*
Coming into force - -	*8th March 2018*

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by section 2(2) of the European Communities Act 1972 [F1].

The Secretary of State has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink) including the primary production of food [F2] and measures in the veterinary and phytosanitary fields for the protection of public health [F3].

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 [F4], there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

F1 1972 c.68.
F2 S.I. 2003/2901.
F3 S.I. 1999/2027.
F4 OJ No. L31, 1.2.2002, p.1, last amended by Regulation (EU) No 652/2014 of the European Parliament and of the Council of 15 May 2014 (OJ No. L189, 27.6.2014, p.1).

Citation, commencement and application

1. These Regulations may be cited as the Novel Foods (England) Regulations 2018, come into force on 8th March 2018 and apply in relation to England only.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Food Safety Act 1990 [F5];

"Regulation (EU) 2015/2283" means Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 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[F6];

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

"food authority" has the same meaning as set out in section 5(1) and (3) of the Act [F7] except that it does not include the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and Middle Temple); and

"specified Union provision" means a provision of Regulation (EU) 2015/2283 specified in column 1, and described in column 2, of the table in Schedule 1.

(2) 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.

F5 1990 c.16.
F6 OJ L 327, 11.12.2015, p.1.
F7 Section 5 of the Act was amended by paragraph 16(1) of Schedule 9 to the Local Government (Wales) Act 1994 (c. 19), **paragraph 163(2)** of Schedule 13 to the Local Government etc (Scotland) Act 1994 (c. 39), **paragraphs 7**, 8 and 9 of Schedule 5 to the Food Standards Act 1999 (c. 28) and Part 1 of Schedule 3 to the Public Health etc. (Scotland) Act 2008 (asp 5).

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 any of the specified Union provisions as read with Article 35(2) of Regulation (EU) 2015/2283 is guilty of an offence and liable on summary conviction to a fine.

Civil sanctions and notices

5.—(1) Schedule 2 makes provision for fixed monetary penalties.

(2) Schedule 3 makes provision for compliance notices and stop notices.

Appeals of civil sanctions and notices

6.—(1) Any person upon whom a fixed monetary penalty is imposed or upon whom a compliance notice or a stop notice is served may appeal to a magistrates' court.

(2) The procedure on appeal to a magistrates' court is by way of complaint for an order, and the Magistrates' Courts Act 1980 applies to the proceedings.

(3) The period within which an appeal may be brought is one month from the date on which the fixed monetary penalty was imposed or the compliance notice or stop notice was served on the person wishing to appeal and the making of a complaint for an order shall be deemed for the purposes of this paragraph to be the making of the appeal.

(4) A compliance notice is suspended pending an appeal.

(5) The court may, in relation to the imposition of a fixed monetary penalty or service of a notice—

(a) confirm the penalty or the notice or any requirement contained in the notice;

(b) vary the penalty or the notice or any requirement contained in the notice; or

(c) revoke the penalty or the notice or any requirement contained in the notice.

(6) The court may, in relation to compensation payable in respect of stop notices and completion certificates—

(a) award compensation;

(b) vary the amount of compensation, by increasing or decreasing it; or

(c) order the repayment of compensation (in whole or part) to the food authority.

Application of various provisions of the Act

7.—(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);

(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—

"**9.**—(1) An authorised officer of a food authority may at all reasonable times inspect any novel food which has been placed on the market.

(2) Where, on inspection, it appears to the authorised officer that a specified Union provision is being, or has been, contravened in relation to any such novel food, 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 justice of the peace;

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 the specified Union provision 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 justice of the peace.

(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 justice of the peace and—

(a) any person who might be liable to a prosecution in respect of the novel food shall, if attending before the justice of the peace by whom the food falls to be dealt with, be entitled to be heard and to call witnesses; and

(b) that justice of the peace may, but need not, be a member of the court before which any person is charged with an offence in relation to that novel food.

(5) If it appears to a justice of the peace, on the basis of such evidence as the justice of the peace considers appropriate in the circumstances, that any novel food falling to be dealt with under this section fails to comply with the specified Union provision, the justice of the peace 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.

(6) If a notice under subsection (2)(a) above is withdrawn, or the justice of the peace 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.

(7) Any disputed question as to the right to or the amount of any compensation payable under subsection (6) above shall be determined by arbitration.”.

Revocation

8. The Novel Foods and Novel Food Ingredients Regulations 1997 [F8] and the Novel Foods and Novel Food Ingredients (Fees) Regulations 1997 [F9] are revoked in relation to England and Northern Ireland.

F8 S.I. 1997/1335.
F9 S.I. 1997/1336.

Review

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

(a) carry out a review of the operation and effect of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory provisions 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.

(3) 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.

(4) 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 and Social Care.

Stephen Brine
Department of Health and Social Care — Parliamentary Under-Secretary of State,

We consent

Mark Spencer
David Rutley
Two of the Lords Commissioners of Her Majesty's Treasury