SCOTTISH STATUTORY INSTRUMENTS

2000 No. 171

FOOD

The Meat (Enhanced Enforcement Powers) (Scotland) Regulations 2000

Made - - - -	*6th June 2000*
Laid before the Scottish Parliament - - - -	*9th June 2000*
Coming into force - -	*30th June 2000*

The Scottish Ministers, in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972(**1**) and in exercise of the powers conferred on them by sections 6(4), 16(1)(b), (c), (d) and (f), 17(1), 19(1), 26(2) and 48(1) of, and paragraphs 5(1) and (2)(a), 6(1) and 7(1) and (2) of Schedule 1 to, the Food Safety Act 1990(**2**), and of all other powers enabling them in that behalf, after consultation in accordance with section 48(4) of that Act with such organisations as appear to them to be representative of interests likely to be substantially affected by the Regulations, and having regard in accordance with section 48(4A) 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 Meat (Enhanced Enforcement Powers) (Scotland) Regulations 2000 and shall come into force on 30th June 2000.

(2) These Regulations extend to Scotland only.

Amendments to the Fresh Meat (Hygiene and Inspection) Regulations 1995

2.—(1) The Fresh Meat (Hygiene and Inspection) Regulations 1995(**3**) shall be amended in accordance with the following paragraphs of this regulation.

(**1**) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 15(3). The function conferred upon the Minister of the Crown under section 2(2) of the European Communities Act 1972, insofar as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.

(**2**) 1990 c. 16; section 6(4) was amended by paragraph 6 of Schedule 9 to the Deregulation and Contracting Out Act 1994 (c. 40) and by paragraph 10(3) of Schedule 5 to the Food Standards Act 1999 (c. 28); sections 16(1), 19(1) and 48(1) were amended by paragraph 8 of that Schedule; section 17(1) was amended by paragraphs 8 and 12 of that Schedule. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**3**) S.I. 1995/539, amended by S.I. 1995/731, 1763, 2200, 2148, 3124, 3189, S.I. 1996/1148 and 2235, S.I. 1997/1729 and 2074 and S.S.I. 2000/62.

(2) In paragraph (1) of regulation 2 (interpretation) the following definitions shall be inserted in the appropriate alphabetical positions—

""associate", in relation to a person entitled to exercise or control the exercise of voting power in relation to a body corporate or holding shares in a body corporate, means—

(a) if that first-mentioned person is a natural person—

(i) his husband, wife, son or daughter,

(ii) any body corporate of which he is a director, or

(iii) any person who is his employee or partner;

(b) if that first-mentioned person is a body corporate—

(i) any of its directors,

(ii) any body corporate which is a subsidiary of it,

(iii) any employee or director of any such subsidiary,

(iv) (if it is itself a subsidiary) any other subsidiary of the holding company they have in common, or

(v) any employee or director of any such subsidiary; and

(c) (whether that first-mentioned person is a natural person or a body corporate) if that person has with any other person an agreement or arrangement—

(i) with respect to the acquisition, holding or disposal of shares or other interests in the body corporate first-mentioned in this definition, or

(ii) under which both the parties to the agreement or arrangement undertake to act in exercising their voting power in relation to the said body corporate,

that other person;";

""body corporate" includes a Scottish partnership, and in relation to such a partnership, a reference to a director or other officer of a body corporate is a reference to a partner;";

""controller", in relation to any occupier of any licensed premises which is a body corporate, means a person—

(a) in accordance with whose directions or instructions any of the directors of that body corporate or of any other body corporate which is its controller are accustomed to act; or

(b) who, either alone or with any associate, is entitled to exercise, or control the exercise of, at least one-third of the voting power at any general meeting of that body corporate or of any other body corporate which is its controller;";

""director" means—

(a) in relation to a body corporate whose affairs are managed by a board of directors or similar body, a member of that board or body;

(b) in relation to a body corporate whose affairs are managed by a single director or similar person, that director or person;

(c) in relation to a body corporate whose affairs are managed by the members themselves, a member of the body corporate;";

""manager" means a person who exercises managerial functions in relation to licensed premises;"; and

""subsidiary" and "holding company" mean respectively a "subsidiary" and a "holding company" within the meaning of section 736(1) of the Companies Act 1985(**4**);".

(**4**) 1985 c. 6; section 736(1) was substituted by section 144(1) of the Companies Act 1989 (1989 c. 40).

(3) In paragraph (1) of regulation 3 (exemptions and savings for existing licences) the phrase "Subject to regulation 3A," shall be inserted at the beginning.

(4) The following regulation shall be inserted into Part I immediately after regulation 3—

"**Obligations on persons engaged in otherwise exempt activities**

3A.—(1) No person who (by virtue of regulation 3(1)(f)) is stated to be exempt from these Regulations shall—

(a) sell, offer for sale or expose for sale; or

(b) possess with a view to sale or preparation for sale,

any fresh meat intended for human consumption unless each operation in relation to that meat required to have been carried out in compliance with these Regulations has been so carried out.

(2) Notwithstanding regulation 3(1)(f), regulations 2, 21, 22 and 23 shall apply in respect of the prohibitions imposed by paragraph (1) above.".

(5) For paragraph (1) of regulation 4 (issue of licences) there shall be substituted the following:—

"(1) No person shall carry on the business of a slaughterhouse, cutting premises, re-packaging centre, cold store, farmed game handling facility or farmed game processing facility unless—

(a) the premises concerned are licensed for the business concerned by the Agency;

(b) that person complies with any conditions to which the licence is subject; and

(c) that person—

(i) applies for the licence for those premises on or after the date of coming into force of the Meat (Enhanced Enforcement Powers) (Scotland) Regulations 2000,

(ii) was the occupier of those premises on the date of coming into force of the Meat (Enhanced Enforcement Powers) (Scotland) Regulations 2000 and has complied with the obligation in regulation 7A,

(iii) (subsequent to the grant of the licence or the date of coming into force of the Meat (Enhanced Enforcement Powers) (Scotland) Regulations 2000, whichever is later) notified the Agency in accordance with regulation 4A(3) of his intention to carry on that business there, or

(iv) (where the previous occupier of those premises was a natural person) is the executor or a member of the family of the previous occupier, and that previous occupier died less than one month previously.".

(6) The following paragraph shall be inserted between paragraphs (3) and (4) of regulation 4—

"(3A) Each application for a licence under this regulation shall include the name and principal business address of each person who is a director, manager or controller of the applicant.".

(7) The following regulation shall be inserted between regulation 4 and regulation 5 (revocation of licences)—

"**Change of directors, managers and controllers of occupiers of licensed premises and change of occupier of such premises**

4A.—(1) The occupier of licensed premises shall notify the Agency of any change in the identity or principal business address of his directors, managers or controller as soon as is

reasonably practicable after that change occurs, and in any event within one month of that change.

(2) No occupier of licensed premises shall transfer possession of or allow another person to occupy those premises for the purposes of carrying on any activity permitted by the licence unless he notifies the Agency of that person's name and principal business address at least 21 days before the transfer or occupation concerned.

(3) Any person who intends to occupy licensed premises (whether alone or jointly) for the purposes of carrying on any business for which those premises are licensed shall notify the Agency at least 21 days before he occupies them of his intention to do so, and of his name and principal business address.

(4) Where the occupier (being a natural person) dies, paragraph (3) above shall not apply to occupation of those premises by the deceased's executor or by any member of his family, but the successor shall notify the Agency of his name and principal business address within one month of the death.

(5) Any notification pursuant to paragraph (2), (3) or (4) above shall record the respective identities and principal business addresses of each director, manager and controller of the new occupier.".

(8) In paragraph (1)(b) of regulation 5 the words "as to hygiene" shall be omitted.

(9) For paragraph (1)(c) of regulation 5 there shall be substituted the following:—

"(c) any condition attached to the licence has not been complied with;".

(10) The following regulation shall be inserted between regulation 5 and regulation 6 (appeals)—

"**Suspension of licences**

5A.—(1) The Agency may suspend a licence granted in respect of any premises where—

(a) it appears to it that—

(i) any requirement of these Regulations in relation to the premises or any condition attached to the licence is being breached, or

(ii) adequate health inspection in accordance with these Regulations is being hampered there; or

(b) a notice has been served in relation to those premises pursuant to regulation 10(1), and—

(i) the Agency is not satisfied that the action specified in the notice has been taken within the time specified there, and

(ii) as a result of the failure to take the action specified in the notice, any requirement of these Regulations is still being breached, or adequate health inspection is still being hampered, there.

(2) Where the Agency intends to suspend a licence pursuant to paragraph (1) above, it shall give notice in writing to the occupier of the premises, informing him of—

(a) its decision to suspend the licence;

(b) the date on which it intends the suspension to take effect (which may be the date on which the notice is issued);

(c) the matters which must be remedied in order for the suspension to be lifted; and

(d) the occupier's right to appeal under regulation 6, and of the time within which any such appeal must be made.

(3) Insofar as a licence is suspended pursuant to paragraph (1) above, the premises in respect of which that licence was granted shall be treated for the purposes of these Regulations as if they were not licensed premises.

(4) The Agency shall lift the suspension of any licence where it is satisfied that the matters specified in the notice referred to in paragraph (2) above have been remedied or where a Meat Hygiene Appeals Tribunal has determined under regulation 6(3) that the licence should not have been suspended, and may lift the suspension of any licence in any other case.

(5) Where the Agency lifts a suspension pursuant to paragraph (4) above, it shall do so by notice specifying the date on which it is lifted.".

(11) For paragraph (1) of regulation 6 there shall be substituted the following:—

"(1) Where the Agency—

(a) has refused to license any premises;

(b) has granted a licence subject to conditions or has subsequently attached conditions to a licence;

(c) has suspended the licence of any premises; or

(d) has revoked the licence of any premises,

the owner or occupier of, or any person proposing to occupy, the premises may within 21 days of being notified of the relevant decision of the Agency referred to above appeal to a Meat Hygiene Appeals Tribunal.".

(12) For paragraph (3) of regulation 6 there shall be substituted the following:—

"(3) Where on an appeal under paragraph (1) above a Meat Hygiene Appeals Tribunal determines that—

(a) the grant of a licence should not have been refused;

(b) conditions have unreasonably been attached to a licence;

(c) a licence should not have been suspended; or

(d) a licence should not have been revoked,

the Agency shall give effect to the determination of the Tribunal.".

(13) For paragraph (4) of regulation 6 there shall be substituted the following:—

"(4) Where the Agency has revoked the licence of any premises under regulation 5, a person who, immediately before such revocation, had been using those premises may continue to use them, subject to any reasonable conditions imposed by the Agency for the protection of public health, unless—

(a) the time for appealing against the Agency's decision pursuant to paragraph (1) above has expired without an appeal having been lodged; and

(b) (where an appeal has been lodged within the 21-day period stipulated in that paragraph) the appeal has been finally disposed of or abandoned.

(5) Nothing in paragraph (4) above shall permit premises to be used if—

(a) a prohibition order, emergency prohibition notice, emergency prohibition order or emergency control order has been imposed on the premises pursuant to section 11, 12 or 13 of the Act; or

(b) the Agency has suspended the licence of the premises pursuant to regulation 5A.".

(14) The following regulation shall be inserted into Part II, after regulation 7—