

2010 No. 450

FOOD

The Eggs and Chicks (Scotland) Amendment Regulations 2010

Made - - - - *16th December 2010*

Laid before the Scottish Parliament *20th December 2010*

Coming into force - - *29th January 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(a) and sections 6(4), 16(1), 17, 26(3) and 48(1) of the Food Safety Act 1990(b), and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for the references to Council Regulation (EC) No. 1234/2007 (Single CMO Regulation)(c) and Commission Regulation (EC) No. 589/2008(d) and Directive 2000/13/EC(e) referred to in regulations 4, 9, 12, 13, 14 and 17 to be construed as references to those instruments as amended from time to time.

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- (a) 1972 c.68 (“the 1972 Act”). Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46), (“the 1998 Act”) (which was amended by section 27(4) of the Legislative and Regulatory Reform Act 2006 (c.51) (“the 2006 Act”) and section 27(1)(a) of the 2006 Act and by the European Union (Amendment) Act 2008 (c.7) (“the 2008 Act”), Schedule, Part 1. The functions conferred upon the Minister of the Crown under section 2(2) of the 1972 Act in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act, and so far as exercisable in or as regards Scotland in relation to food (including drink) including the primary production of food, are exercisable by the Scottish Ministers concurrently with the Minister of the Crown by virtue of article 3 of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849). Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act and was amended by the 2008 Act, Schedule 1, Part 1.
- (b) 1990 c.16 (“the 1990 Act”). Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. 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) (“the 1999 Act”). Section 16(1) was amended by paragraphs 7 and 8 of Schedule 5 to the 1999 Act. Section 17 was amended by paragraphs 7, 8 and 12(a) and (b) of Schedule 5 to the 1999 Act. Section 26(3) was repealed in part by Schedule 6 to the 1999 Act. Section 48(1) was amended by paragraphs 7 and 8 of Schedule 5 to the 1999 Act. The requirement on the Scottish Ministers under section 48(4) to consult with such organisations as appear to them to be representative of interests likely to be substantially affected by this instrument is disapplied by virtue of section 48(4C), as inserted by S.I. 2004/2990, as consultation is required in respect of this instrument by Article 9 of Regulation (EC) No. 178/2002. The amendments to the 1990 Act made by Schedule 5 to the 1999 Act which extend to Scotland are to be taken as a pre-commencement enactment for the purposes of the 1998 Act by section 40(2) of the 1999 Act. The functions of the Secretary of State, so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. The functions conferred on a Minister of the Crown under sections 6(4), 16, 17, 26 and 48 of the 1990 Act were transferred to the Scottish Ministers by the Scotland Act (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849) but only in so far as not transferred by section 53 of the 1998 Act.
- (c) O.J. L 163, 24.6.2008, p.6. This Regulation has been amended by Commission Regulation (EC) 598/2008 O.J. L 164, 25.6.2008, p.14 and Commission Regulation (EU) No. 557/2010, O.J. L 159, 25.6.2010, p.13.
- (d) O.J. L 299, 16.11.2007, p.1. This Regulation was last amended by Commission Regulation (EU) No. 513/2010 O.J. L 150, 16.6.2010, p.40.
- (e) O.J. L 109, 6.5.2000, p.29, to which there are no amendments relevant to Article 1(2).

To the extent that these Regulations are made in exercise of powers under the Food Safety Act 1990, the Scottish Ministers have had regard to relevant advice given by the Food Standards Agency as required by section 48(4A) of that Act(a).

The Scottish Ministers have carried out consultation 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(b).

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Eggs and Chicks (Scotland) Amendment Regulations 2010 and come into force on 29th January 2011.

Interpretation

2. In these Regulations—

“the principal Regulations” means the Eggs and Chicks (Scotland) (No. 2) Regulations 2008(c); and

“the 1996 Regulations” means the Food Labelling Regulations 1996(d).

PART 2

Amendments to the principal Regulations

3. The principal Regulations are amended in accordance with regulations 4 to 17.

Amendment to regulation 2

4. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) after the definition of “production site” insert—

““Regulation (EC) No. 2160/2003” means Regulation (EC) No. 2160/2003 of the European Parliament and of the Council on the control of salmonella and other specified food-borne zoonotic agents(e).”;

(ii) for the definition of “eggs” substitute—

““eggs”—

(a) has the meaning given by sub-paragraph (k) of the second paragraph of Article 1 of Commission Regulation (EC) No. 589/2008 in the definition of “Commission Regulation (EC) No. 589/2008” in this regulation, regulations 3(1)(b), (2)(b) and (c), Part 3, regulations 13, 15 and 17(2)(b) and Schedule 2 to these Regulations; and

(a) Section 48(4A) was inserted by the 1999 Act, section 40(1) and Schedule 5, paragraph 21.

(b) O.J. No. L 31, 1.2.2002, p.1, to which there are no amendments relevant to Article 9.

(c) S.S.I. 2008/395.

(d) S.I. 1996/1499, relevantly amended by S.S.I. 2008/129 and 395.

(e) O.J. L 325, 12.12.2003, p.1; last amended by Regulation (EC) No. 596/2009 O.J. L 188, 18.7.2009, p.14.

- (b) means eggs to which Regulation (EC) No. 2160/2003 applies as read with the exception in Article 1(3) of Regulation (EC) No. 2160/2003 in regulation 3(1)(c), Part 3A, regulation 13A, 15A and Schedule 2A to these Regulations;”;
- (iii) in the definition of “enforcement authority” for “regulation 15” substitute “regulation 15 or 15A”; and
- (b) after paragraph (5), insert—

“(6) Any reference to a contravention of or failure to comply with any provision mentioned in Schedule 2A means a contravention of or failure to comply with any provision of Regulation (EC) No. 2160/2003 mentioned in column 1 of Schedule 2A.”.

Amendment to regulation 3

- 5. In regulation 3 (products to which these regulations apply)—
 - (a) after sub-paragraph (1)(b) insert—

“(c) eggs to which Regulation (EC) No. 2160/2003 applies as read with the exception in Article 1(3) of Regulation (EC) No. 2160/2003.”;
 - (b) in paragraph (2) for “But they do not apply to” substitute “But Parts 2 and 3 of these Regulations do not apply to”.

Amendment to regulation 9

- 6. After regulation 9(2) (derogations relating to the marking of eggs) insert—

“(3) But paragraphs (1) and (2) do not apply to eggs that must be considered as class B eggs by virtue of paragraph (a) of the second sub-paragraph of point 2 of Part D of Annex II to Regulation (EC) No. 2160/2003.”.

Insertion of Part 3A

- 7. After Part 3 (eggs in shell for consumption) insert—

“PART 3A

Eggs in shell for consumption: salmonella control related requirements

Compliance with EU provisions

12A. Any person who contravenes, or fails to comply with, any provision mentioned in Schedule 2A commits an offence.”.

Insertion of regulation 13A

- 8. After regulation 13 (powers of authorised officers) insert—

“Powers of authorised officers – salmonella control related requirements

13A.—(1) An authorised officer may direct any person to leave undisturbed for so long as is reasonably necessary for the purpose of any examination or investigation any—

- (a) eggs;
- (b) packs or other containers for eggs;
- (c) labels or documents relating to eggs; and
- (d) any premises on or in which any eggs, any packs or other containers for eggs and any labels or documents relating to such eggs are found.

(2) If an examination or investigation will not be carried out immediately after a direction has been given under paragraph (1), an authorised officer may apply tape to the packs or other containers for eggs that are subject to that direction, or otherwise secure them pending the examination or investigation.

(3) An authorised officer may direct any person to ensure that any—

- (a) eggs;
- (b) packs or other containers for eggs; or
- (c) labels or documents relating to eggs,

which do not comply in any respect with the requirements of any provision mentioned in Schedule 2A (as regards eggs in shell for consumption and salmonella control related requirements), comply with those requirements before being removed from any land, vehicle or trailer, except as may be otherwise directed in writing by an authorised officer.

(4) Except as stated in paragraph (3), any direction given by an authorised officer under paragraph (1) or (3) can be given orally or in writing but any direction given orally must be confirmed in writing as soon as practicable and, in any event, within 24 hours.

(5) An authorised officer must not exercise the powers under paragraphs (1) to (3)—

- (a) except on the production, if so required, of a duly authenticated document showing the officer's authority; and
- (b) except for the purpose of enforcing these Regulations.

(6) A person is guilty of an offence if that person—

- (a) without reasonable excuse, fails to comply with any requirement imposed on that person by a direction given by an authorised officer under paragraph (1);
- (b) unless authorised to do so in writing by an authorised officer, tampers with any packs or containers that have been secured by an authorised officer under paragraph (2); or
- (c) without reasonable excuse, fails to comply with any requirement imposed on that person by a direction given by an authorised officer under paragraph (3).".

Insertion of regulation 15A

9. After regulation 15 (enforcement) insert—

“Enforcement – salmonella control related requirements

15A.—(1) Each food authority must enforce the provisions mentioned in Schedule 2A, as read with regulation 12A, in so far as they apply to—

- (i) the retail sale of eggs within their area; and
- (ii) the sale of eggs to a mass caterer in their area.

(2) The Scottish Ministers may enforce the provisions mentioned in Schedule 2A, as read with regulation 12A, in so far as they apply to the retail sale of eggs or the sale of eggs to a mass caterer.

(3) The Scottish Ministers must enforce the provisions mentioned in Schedule 2A, as read with regulation 12A, in so far as they do not apply to the retail sale of eggs or the sale of eggs to a mass caterer.

(4) In this regulation—

“mass caterer” means any of the entities referred to in Article 1(2) of Directive 2000/13/EC;

“retail sale” means any sale other than a sale for use or resale in the course of a trade or business; and

“sale” includes possession for sale and offer, exposure and advertisement for sale.”.

Amendment to regulation 18

10. In regulation 18 (penalty), for “13(6)” substitute “12A, 13(6), 13A(6)”.

Amendment to regulation 20

11. In regulation 20(2)(a) (application to various provisions of the Act), for “Schedules 1 and 2” substitute “Schedules 1, 2 and 2A”.

Amendment to Schedule 2, Part 1, Column 2

12. In Schedule 2, part 1, column 2, in the entry relating to Point III(1) of Part A of Annex XIV, second sub-paragraph, after “Articles 9, 10 and 11 of Commission Regulation (EC) No. 589/2008” insert—

“, paragraphs (a) and (b) of the second sub-paragraph of point 2 of Part D of Annex II to Regulation (EC) No. 2160/2003”.

Amendment to Schedule 2, Part 2, Column 2

13. In Schedule 2, part 2, column 2, in the entry relating to Article 2(1), after “Point II(1) of Part A of Annex XIV, first indent, to the Single CMO Regulation” insert—

“, paragraph (a) of the second sub-paragraph of point 2 of Part D of Annex II to Regulation (EC) No. 2160/2003 and regulation 12A as read with the entry in Schedule 2A relating to paragraph (a) of the second sub-paragraph of point 2 of Part D of Annex II to Regulation (EC) No. 2160/2003”.

14. In Schedule 2, part 2, column 2, in the entry relating to Article 2(4), after “Point II(1) of Part A of Annex XIV, second indent, to the Single CMO Regulation” insert—

“, paragraph (a) of the second sub-paragraph of point 2 of Part D of Annex II to Regulation (EC) No. 2160/2003 and regulation 12A as read with the entry in Schedule 2A relating to paragraph (a) of the second sub-paragraph of point 2 of Part D of Annex II to Regulation (EC) No. 2160/2003”.

Amendment to Schedule 2, Part 2, Column 3

15. In Schedule 2, part 2, column 3, in the entry relating to Article 2(1), after “Quality characteristics of class A eggs” insert—

“and cases in which eggs meeting those quality characteristics must be categorised as class B eggs”.

16. In Schedule 2, part 2, column 3, in the entry relating to Article 2(4), after “Quality characteristics of class B eggs” insert—

“and cases in which eggs meeting the quality characteristics for class A eggs must be categorised as class B eggs”.

Insertion of new Schedule 2A

17. After Schedule 2 (community provisions relating to eggs in shell for consumption contravention of which is an offence) insert—

“SCHEDULE 2A Regulations 2(1) and (6),
12A, 13A(3), 15A and 20(2)

**EU PROVISIONS RELATING TO EGGS IN SHELL FOR
CONSUMPTION: SALMONELLA CONTROL RELATED
REQUIREMENTS THE CONTRAVENTION OF WHICH IS AN
OFFENCE**

Column 1	Column 2	Column 3
Relevant provision of Regulation (EC) No. 2160/2003	Provisions to be read with the provisions of Regulation (EC) No. 2160/2003 mentioned in column 1	Subject matter
Point 1 of Part D of Annex II	Article 1(3) of Regulation (EC) No. 2160/2003	Prohibition on the use of eggs for direct human consumption as table eggs unless they originate from a commercial flock of laying hens subject to a national control programme and are not under official restriction.
Point 2, first subparagraph, of Part D of Annex II	Point 4 of Part D of Annex II to Regulation (EC) No. 2160/2003	Prohibition on the use of certain zoonosis status eggs for human consumption unless treated, except where the restrictions in point 2 of Part D of Annex II to Regulation (EC) No. 2160/2003 are lifted under point 4 of that Part.
Point 2, second subparagraph, paragraph (a), of Part D of Annex II	Article 1(3) of, and point 4 of Part D of Annex II to, Regulation (EC) No. 2160/2003, the provisions of Articles 113(3) and 116 of, and Part A of Annex XIV to, the Single CMO Regulation, and Commission Regulation (EC) No. 589/2008, in so far as they relate to class B eggs	Treatment of certain zoonosis eggs as class B eggs, except where the restrictions in point 2 of Part D of Annex II to Regulation (EC) No. 2160/2003 are lifted under point 4 of that Part.
Point 2, second subparagraph, paragraph (b), of Part D of Annex II	Article 1(3) of, and point 4 of Part D of Annex II to, Regulation (EC) No. 2160/2003 and Article 10 of Commission Regulation (EC) No. 589/2008	Marking of certain zoonosis status eggs with the indication required by Article 10 of Commission Regulation (EC) No. 589/2008, except where the restrictions in point 2 of Part D of Annex II to Regulation (EC) No. 2160/2003 are lifted under point 4 of that Part.

Column 1	Column 2	Column 3
Point 2, second sub-paragraph, paragraph (c), of Part D of Annex II	Point 4 of Part D of Annex II to Regulation (EC) No. 2160/2003	Prohibited access to packing centres for certain zoonosis status eggs unless the competent authority is satisfied with measures to prevent possible cross-contamination, except where the restrictions in point 2 of Part D of Annex II to Regulation (EC) No. 2160/2003 are lifted under point 4 of that Part.”

PART 3

Amendments relevant to the 1996 Regulations

18. Regulation 22(1) (saving and transitional provisions) and paragraph 2(b) of Schedule 3 (Food Labelling Regulations 1996 amendment) to the principal Regulations are revoked.

19. In the 1996 Regulations, in regulation 45 (enforcement)—

(a) for paragraph (1) substitute—

“(1) Subject to paragraphs (2) and (2A) of this regulation, each food authority shall enforce and execute these Regulations in its area.”; and

(b) after paragraph (2) insert—

“(2A) The Scottish Ministers—

(a) may in relation to hen eggs for retail sale or sale to a mass caterer and to which Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products and Commission Regulation (EC) No. 589/2008 laying down detailed rules for implementing Council Regulation (EC) No. 1234/2007 as regards marketing standards for eggs apply, enforce and execute the provisions of these Regulations which relate to the particulars listed at points (1), (4) and (7) of Article 3(1) of Directive 2000/13/EC^(a); and

(b) must in relation to hen eggs not for retail sale or sale to a mass caterer and to which Council Regulation (EC) No. 1234/2007 and Commission Regulation (EC) No. 589/2008 apply, enforce and execute the provisions of these Regulations which relate to the particulars listed at points (1), (4) and (7) of Article 3(1) of Directive 2000/13/EC.

(2B) In this regulation—

“mass caterer” means any of the entities referred to in Article 1(2) of Directive 2000/13/EC, as amended from time to time;

“retail sale” means any sale other than a sale for use or resale in the course of a trade or business; and

(a) O.J. L 109, 6.5.2000, p.29, to which there are no amendments relevant to Article 3(1).

“sale” includes possession for sale and offer, exposure and advertisement for sale.”.

St Andrew’s House,
Edinburgh
16th December 2010

RICHARD LOCHHEAD
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Eggs and Chicks (Scotland) (No. 2) Regulations 2008 (“the principal Regulations”). The amendments make new provision for the enforcement of directly applicable EU controls for salmonella serotypes with public health significance in relation to the marketing and use of eggs in shell for human consumption. They include provisions making the failure to comply with the provisions of Regulation (EC) No. 2160/2003 (O.J. L 325, 12.2.2003, p.1) of the European Parliament and of the Council on the control of salmonella and other specified food-borne zoonotic agents an offence, by inserting a new regulation 12A in the principal Regulations (regulation 7).

Paragraph 1A of Schedule 2 to the European Communities Act 1972 is included in the enabling power for these Regulations. This is necessary because references are made in regulations 4, 9, 12, 13, 14 and 17 to EU instruments which are defined in the principal Regulations as meaning those EU instruments as amended from time to time.

These Regulations also make amendments to and relevant to the Food Labelling Regulations 1996. These remove an ambiguity over the amendment to regulation 45 made by paragraph 2(b) of Schedule 3 to the principal Regulations when read with regulation 22(1) of those Regulations.

A Business and Regulatory Impact Assessment has not been produced, as there will be no cost to business.

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