
STATUTORY INSTRUMENTS

2018 No. 0000

FOOD, ENGLAND

Novel Foods (England) Regulations 2018

<i>Made</i>	- - - -	2018
<i>Laid before Parliament</i>		2018
<i>Coming into force</i>	- -	2018

The Secretary of State makes the following Regulations in exercise of the powers conferred on her by section 2(2) of the European Communities Act 1972(a).

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(b) and measures in the veterinary and phytosanitary fields for the protection of public health(c).

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(d), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Citation, commencement and application

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

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990(e);

“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(f);

(a) 1972 c.68.

(b) S.I. 2003/2901.

(c) S.I. 1999/2027.

(d) 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).

(e) 1990 c.16.

(f) OJ L 327, 11.12.2015, p.1.

“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 these Regulations and Regulation (EU) 2015/2283;

“food authority” has the same meaning as set out in section 5(1) and (3) of the Act^(a) 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.

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) An appeal of the fixed monetary penalties under Schedule 2 and of the compliance notices and stop notices under Schedule 3 is to the First-tier Tribunal.

(2) In any appeal (except in relation to a stop notice) where the commission of an offence is an issue requiring determination, the food authority must prove that offence according to the same burden and standard of proof as in a criminal prosecution.

(3) In the case of a stop notice the Tribunal must determine the standard of proof.

(4) All notices (other than stop notices) are suspended pending appeal.

(5) The Tribunal may suspend or vary a stop notice.

(6) The Tribunal may, in relation to the imposition of a requirement or service of a notice—

(a) withdraw the requirement or notice;

(b) confirm the requirement or notice;

(c) vary the requirement or notice;

(d) take such steps as the food authority could take in relation to the act or omission giving rise to the requirement or notice;

(e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the food authority.

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

(a) award compensation;

(a) 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).

- (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 (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) This section applies where it appears to an authorised officer of a food authority that a specified Union provision is being, or has been, contravened in relation to any novel food which has been placed on the market.

(2) 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(a) and the Novel Foods and Novel Food Ingredients (Fees) Regulations 1997(b) are revoked in relation to England.

Review

9.—(1) The Secretary of State [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

Name
Parliamentary Under Secretary of State
Department of Health

Date

(a) S.I. 1997/1335.
(b) S.I. 1997/1336.

SCHEDULES

SCHEDULE 1

Regulation 2(1)

Specified Union Provisions

<i>1. Specified Union Provision</i>	<i>2. Subject matter</i>
1. Article 6.2 as read with Article 24.	Requirement that only novel foods authorised and included in the Union list may be placed on the market as such, or used in or on foods, in accordance with the conditions of use and labelling requirements specified therein, and with any post-market monitoring requirements.
2. Article 25.	Requirement that any food business operator which has placed a novel food on the market shall immediately inform the Commission of any information of which it becomes aware concerning (a) any new scientific or technical information which might influence the evaluation of the safety of use of the novel food; (b) any prohibition or restriction imposed by a third country in which the novel food is placed on the market.

SCHEDULE 2

Regulation 5(1)

Fixed monetary penalties

Power to impose a fixed monetary penalty

1.—(1) An authorised officer may by notice impose a fixed monetary penalty on a person in relation to an offence under these Regulations.

(2) Before doing so, the authorised officer must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) “Fixed monetary penalty” means a requirement to pay to the food authority a penalty of £[n] for an individual or £[n] for a body corporate.

Contents of notice

2. The notice imposing the fixed monetary penalty must include information as to—

- (a) the amount of the fixed monetary penalty;
- (b) the grounds for imposing the penalty;
- (c) how payment may be made;
- (d) the period of 56 days within which payment must be made;
- (e) details of the early payment discounts and late payment penalties;

- (f) rights of appeal; and
- (g) the consequences of non-payment.

Discount for early payment

3. A person who was served with a notice imposing a fixed monetary penalty may discharge the penalty by paying 50% of the penalty within 28 days beginning with the day on which the notice was received.

Appeals

- 4.—(1) A person receiving a notice imposing a fixed monetary penalty may appeal against it.
- (2) The grounds of appeal are—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the decision was unreasonable.

Non-payment after 56 days

- 5.—(1) The fixed monetary penalty must be paid within 56 days of receipt of the notice.
- (2) If the penalty is not paid within 56 days the amount payable is increased by 50%.
- (3) In the case of an appeal it is payable within 28 days of the determination of the appeal (if the appeal is unsuccessful), and if it is not paid within 28 days the amount of the penalty is increased by 50%.

Criminal proceedings

6. If a fixed monetary penalty is imposed on any person, that person may not at any time be convicted of the offence in respect of the act or omission giving rise to the penalty.

SCHEDULE 3

Regulation 5(2)

Compliance notices and stop notices

PART 1

Compliance notices

Imposition of a compliance notice

1.—(1) A food authority may by notice impose a requirement to take such steps as the food authority may specify, within such period as it may specify, to secure that an offence under these Regulations does not continue or recur (a “compliance notice”).

(2) Before doing so the food authority must be satisfied beyond reasonable doubt that the person has committed the offence.

(3) A compliance notice may not be imposed on a person on more than one occasion in relation to the same act or omission.

Contents of compliance notice

2. The compliance notice must include information as to—
- (a) the grounds for imposing the notice;
 - (b) what compliance is required and the period within which it must be completed;
 - (c) the rights of appeal; and
 - (d) the consequences of failing to comply with the notice.

Appeals

- 3.—(1) A person receiving a compliance notice may appeal against it.
- (2) The grounds of appeal are—
- (a) that the decision was based on an error of fact;
 - (b) that the decision was wrong in law;
 - (c) that the nature of the requirement is unreasonable;
 - (d) that the decision was unreasonable for any other reason.

Criminal proceedings

- 4.—(1) If a compliance notice is imposed on any person, that person may not at any time be convicted of the offence in respect of the act or omission giving rise to the compliance notice except where that person fails to comply with the compliance notice.
- (2) Criminal proceedings for offences to which a compliance notice relates may be instituted at any time up to six months from the date when the food authority notifies the person that such person has failed to comply with that notice.

PART 2

Stop notices

Stop notices

- 5.—(1) The food authority may serve a stop notice on any person in accordance with this Part in relation to an offence under these Regulations.
- (2) A “stop notice” is a notice prohibiting a person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.
- (3) A stop notice may only be served in a case where—
- (a) the person is carrying on the activity; and
 - (b) the food authority reasonably believes that the activity as carried on by that person involves or is likely to involve the commission of an offence under these Regulations.

Contents of a stop notice

6. A stop notice must include information as to—
- (a) the grounds for serving the stop notice;
 - (b) the steps the person must take to comply with the stop notice;
 - (c) rights of appeal; and
 - (d) the consequences of non-compliance.

Appeals

- 7.—(1) The person on whom a stop notice is served may appeal against the decision to serve it.
- (2) The grounds of appeal are—
- (a) that the decision was based on an error of fact;
 - (b) the decision was wrong in law;
 - (c) that the decision was unreasonable;
 - (d) that any step specified in the notice is unreasonable;

- (e) that the person has not committed the offence and would not have committed it had the stop notice not been served;
- (f) that the person would not, by reason of any defence, have been liable to be convicted of the offence had the stop notice not been served.

Completion certificates

8.—(1) Where, after service of a stop notice, the food authority is satisfied that the person has taken the steps specified in the notice, the food authority must issue a certificate to that effect (a “completion certificate”).

(2) The stop notice ceases to have effect on the issue of a completion certificate.

(3) The person on whom the stop notice is served may at any time apply for a completion certificate.

(4) The food authority must make a decision as to whether to issue a completion certificate within 14 days of such an application.

(5) The person on whom the stop notice was served may appeal against a decision not to issue a completion certificate on the grounds that—

- (a) the decision was based on an error of fact;
- (b) the decision was wrong in law;
- (c) the decision was unfair or unreasonable.

Compensation

9.—(1) A food authority must compensate a person for loss suffered as the result of the service of the stop notice or the refusal of a completion certificate if that person has suffered loss as a result of the notice or refusal and—

- (a) a stop notice is subsequently withdrawn or amended by the food authority because the decision to serve it was unreasonable or any step specified in the notice was unreasonable;
- (b) the person successfully appeals against the stop notice and the First-tier Tribunal finds that the service of the notice was unreasonable; or
- (c) the person successfully appeals against the refusal of a completion certificate and the Tribunal finds that the refusal was unreasonable.

(2) A person may appeal against a decision not to award compensation or the amount of compensation—

- (a) on the grounds that the food authority’s decision was unreasonable;
- (b) on the grounds that the amount offered was based on incorrect facts;
- (c) for any other substantial reason.

Offences

10. Where a person on whom a stop notice is served does not comply with it within the time limit specified in the notice, the person is guilty of an offence and liable to a fine.

EXPLANATORY NOTE

(This note is not part of the Order)