

To: Lead Food Officers
Cc: REHIS, SOCOEHS, COSLA, SFELC.

5 August 2015

FSS/ENF/15/007.

Dear Colleague.

Food Information Law: new enforcement powers for authorised officers and new duty for food business operators to report non-compliance with food information law

We would like to bring to your attention that certain provisions of the Food (Scotland) Act 2015 (“the 2015 Act”) came into effect on 1 April 2015, which provide authorised officers of a food authority with new powers in respect of contravention of food information law. The Act also introduced a new duty on food business operators to report non-compliance with food information law.

Background

Following the Food Standards Agency Scotland consultation in March to May 2013 on extending food law in Scotland, and following recommendations made to Scottish Ministers by the Scudamore Expert Advisory Group in June 2013, the Scottish Ministers brought forward provisions in a Bill to introduce new law on food information.

Section 33 in Part 2 of the 2015 Act inserts new provisions on food information into the Food Safety Act 1990. These provisions set out the new food information enforcement powers and the duty on food business operators. Section 33 also defines the meaning of “food information” for the new provisions as having the same meaning as it has in the Regulation (EU) No. 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers.

Part 2 of the 2015 Act also gives Ministers authority to make regulations to introduce a statutory food hygiene information scheme (section 34) and to regulate animal feeding stuffs (section 35). We will be providing Ministers with advice on the food hygiene information scheme at some point in the future.

Enforcement powers now in place

The new enforcement powers are available as of now to authorised officers. In summary, where it appears to an officer that food information law is being, or has been, contravened, the officer may:

- a) give notice that the food is not to be used for human consumption and is not to be removed (except to some place specified in the notice); or
- b) seize the food and remove it in order to have it dealt with by the sheriff.

It will be an offence for any person to knowingly contravene the requirements of a notice and the officer must determine whether or not food information law has been contravened as soon as is practicably possible (and in any event within 21 days). If the officer is satisfied that the law has been contravened the food should be seized and removed to be dealt with by the sheriff.

This aligns enforcement powers for contravention of food information law with the existing powers officers have with regard to contraventions of food hygiene law. However, for food information contraventions the sheriff is given wider discretion than is available for cases where food hygiene law has been contravened. For food information law cases the sheriff may still order that food is destroyed or disposed of (as in food hygiene cases), but may choose to order that the food be modified and returned to the person who was in charge of the food or to order that the food be redistributed as the sheriff may determine. Expenses in respect of destruction, modification, disposal or distribution would fall to the owner of the food to meet.

Duty to report non-compliance with food information law

Section 33 of the 2015 Act also introduces a duty on food business operators to inform Food Standards Scotland if they consider food information law is being contravened in relation to any food they have been in charge of. It is an offence for any person to fail to comply with this.

This new duty also aligns with the existing duty to report food considered to be unsafe for human consumption.

As this is a new duty, we are considering how best to publicise this amongst food business operators. It would be very helpful if authorised officers could bring this new duty to the attention of food business operators routinely and as appropriate to ensure we have general awareness.

Future guidance for authorised officers

We are presently reviewing the Food Law Code of Practice, which will include further guidance on these new enforcement powers.

In the meantime if any officers have questions on the operation of these new enforcement powers, please contact me or the branch at the contact details above.

Yours sincerely



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