



## **Novel Food Seizure and Detention Powers – Authorised Officer Guide**

### **Introduction**

To coincide with the introduction of Regulation (EU) 2015/2283 on Novel Foods, which replaced Regulation (EC) No 258/97 on 1 January 2018, new Scottish Regulations have been made to enable the execution and enforcement of the updated EU requirements. This guide describes the powers available to Local Authority authorised officers in Scotland to deal with suspected unauthorised Novel Foods.

### **Background**

A modification of section 9 (enforcement notices) of the Food Safety Act 1990 (as amended) has been provided in [The Novel Foods \(Scotland\) Regulations 2017](#). It details new provisions with respect to seizure and detention of food in contravention of Article 6(2) of [Regulation \(EU\) 2015/2283](#) regarding unauthorised Novel Food placed on the market. This is because Regulation (EU) 2015/2283 requires that only Novel Foods authorised and included in the 'Union list' may be placed on the market within the EU or used in or on foods, in accordance with conditions of use and the applicable labelling requirements as laid out in Article 6. In line with the new EU Regulation, [Commission Implementing Regulation \(EU\) 2017/2470 of 20 December 2017, establishing the Union list of novel foods](#) has been published and entered into force on 19 January 2018.

These new enforcement provisions have been introduced to overcome the market's failure to ensure that food products placed on the market comply with the regulatory requirements for Novel Foods. These powers for non-compliant Novel Food products will help to ensure that where corrective action is not possible or appropriate, non-compliant products can be removed from the market. These preventative measures are taken to ensure protection of public health and consumer interests and avoid negative impacts on public health being realised e.g. possible toxin and allergen issues from substances without a significant history of human consumption in the EU.

### **Scope of the new powers**

The new approach gives powers to authorised officers to detain food which is suspected of not complying with the EU requirements pending further investigation where suspicions of non-compliance require to be verified. It also allows authorised officers to seize the food to be dealt with by a Sheriff. The Sheriff may then order the destruction of non-compliant novel food products or that information relating to the food be modified, destroyed or disposed of where any alternative remedy is not or

cannot be applied within a reasonable period to render products compliant with the EU Regulation.

### **Formal process and application of powers**

Laid out below is the formal process for applying the notice provisions. Please see the decision tree in Annex A that illustrates this process and can be used as an additional aid for authorised officers.

#### **1) Suspicion of unauthorised Novel Foods**

The new approach enables authorised officers to detain food for the purposes of determining whether or not it is considered a Novel Food in accordance with Article 6(2) of Regulation (EU) 2015/2283. Where it appears to an officer that Article 6(2) of Regulation (EU) 2015/2283 is being, or has been contravened, the officer shall 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).

The authorised officer must determine whether or not Novel Food Law has been contravened 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 Article 6(2) of Regulation (EU) 2015/2283.

#### **2) Withdrawal**

The authorised officer must fully withdraw the notice if they are satisfied that the food complies with Article 6(2) of Regulation (EU) 2015/2283.

#### **3) Seizure**

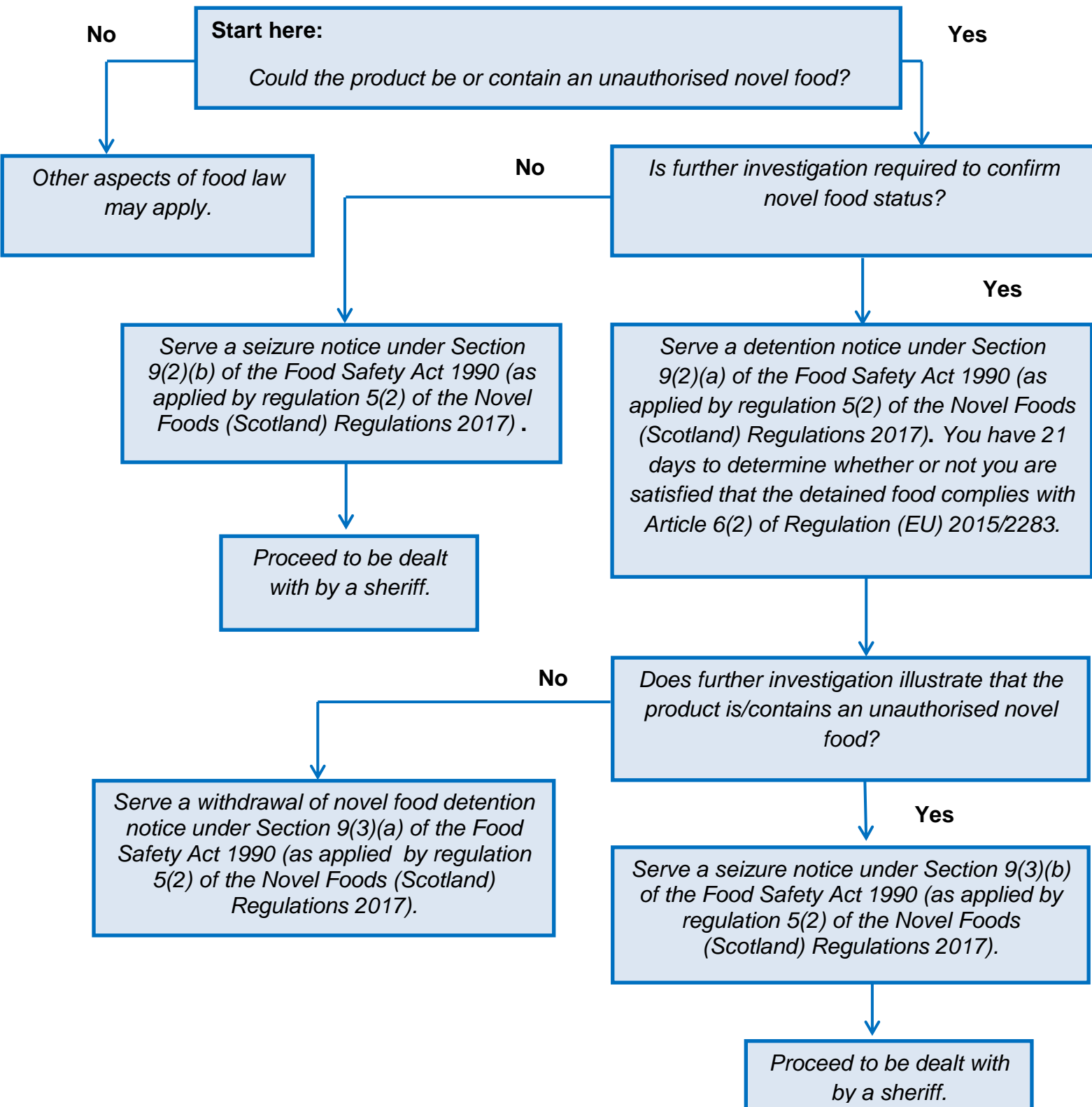
If the officer making the determination is satisfied that contravention of Article 6 (2) of Regulation (EU) 2015/2283 has occurred, the officer must seize the food and/or remove it to be dealt with by a Sheriff. This determination must be made as soon as practicably possible. The authorised officer cannot release the seized food, even if assurances regarding rectifying non-compliances are given.

The sheriff may then condemn the food and order that it is destroyed or disposed of. The sheriff may also require that any information relating to the food be modified destroyed or disposed of. Expenses in respect of destruction or/and disposal would fall to the owner of the food to meet.

#### **5) Compensation**

If a notice under subsection (2) (a) is withdrawn, or the sheriff by whom any food falls to be dealt with under section 9 of the Food Safety Act 1990 (as applied by regulation 5 (2) of the Novel Foods (Scotland) Regulations 2017) refuses to condemn it, the Food Authority may be required to compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

**Annex A**



**Please note:** If a notice under subsection (2) (a) is withdrawn, or the sheriff by whom any food falls to be dealt with under section 9 of the Food Safety Act 1990 (as applied by regulation 5 (2) of the Novel Foods (Scotland) Regulations 2017) refuses to condemn it, the food authority may be required to compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.