

Statutory Instrument 1992 No. 1508

The Food Safety (Live Bivalve Molluscs) (Derogations) Regulations 1992

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STATUTORY INSTRUMENTS

1992 No. 1508

FOOD

FOOD SAFETY

The Food Safety (Live Bivalve Molluscs) (Derogations) Regulations 1992

<i>Made</i>	<i>24th June 1992</i>
<i>Laid before Parliament</i>	<i>25th June 1992</i>
<i>Coming into force</i>	<i>1st July 1992</i>

The Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales, acting jointly in relation to England and Wales, and the Secretary of State for Scotland in relation to Scotland, in the exercise of the powers conferred upon them by sections 6(4) and 17(1) of the Food Safety Act 1990^[1] and all other powers enabling them in that behalf, after consultation in accordance with section 48(4) of that Act with such organisations as appeared to them to be representative of interests likely to be substantially affected, hereby make the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Food Safety (Live Bivalve Molluscs) (Derogations) Regulations 1992 and shall come into force on 1st July 1992.

Interpretation

2.—(1) In these Regulations—

"bivalve molluscs" means filter-feeding lamellibranch molluscs;

"the Commission Decision" means Commission Decision 92/92/EEC^[2], of 9th January 1992, laying down the requirements relating to equipment and structure of dispatch and purification centres for live bivalve molluscs, for which derogations may be granted pursuant to Articles 5 and 12 of the Council Directive;

"conditioning" means storage in tanks or any other installation containing clean seawater or in natural sites to remove sand, mud or slime;

"the Council Directive" means Council Directive 91/492/EEC^[3], of 15th July 1991 laying down the health conditions for the production and the placing on the market of live bivalve molluscs;

"derogation" means the grant of a further period within which to comply fully with the conditions for the approval of dispatch centres and purification centres set out in Chapter IV of the Annex to the Council Directive, which conditions are set out in column (1) to the Schedule to these Regulations;

"dispatch centre" means any on-shore or off-shore installation for the reception, conditioning, washing, cleaning, grading or wrapping of live bivalve molluscs for human consumption;

"food authority" means an authority specified in regulation 6 as an authority which is to enforce and execute these Regulations;

"purification centre" means an establishment with tanks fed by naturally clean seawater or sea water that has been cleaned by appropriate treatment, in which live bivalve molluscs are placed for the time necessary to remove microbiological contamination, so making them fit for human consumption;

"relevant requirement" means, subject to paragraph (2), a condition set out in column (1) of the Schedule to these Regulations in respect of which there is an entry in column (2) of that Schedule which indicates that it is a condition in respect of which, in accordance with the Commission Decision, a derogation may be made.

(2) For the purposes of these Regulations where there is in relation to a relevant requirement a limitation mentioned in column (2) of the Schedule, that requirement is a relevant requirement only to the extent indicated by that limitation.

(3) In these Regulations—

(a) a reference to a numbered regulation is a reference to the regulation in these Regulations which bears that number;

(b) a reference in a regulation to a numbered paragraph is a reference to the paragraph of that regulation which bears that number.

(4) In the Schedule to these Regulations—

(a) a reference to the Annex is a reference to the Annex to the Council Directive;

(b) a reference to a numbered Chapter is a reference to the Chapter which bears that number in the Annex;

(c) a reference in a Chapter to a numbered section or point is a reference to the section or point which bears that number in that Chapter.

Approval of dispatch and purification centres

3. On and after 1st January 1993 no person shall operate any dispatch centre or purification centre unless it has been approved by the Secretary of State, and no such centre shall be so approved unless—

- (a) the Secretary of State is satisfied that it meets the requirements of the Council Directive; or
- (b) the Secretary of State is satisfied that it meets those requirements save in so far as there is in force in respect of it a derogation granted under regulation 5.

Method of applying for a derogation

4.—(1) The proprietor of a food business which consists of or includes the operation of a dispatch centre or purification centre which was operating either on the 31st December 1991 or on the last working day immediately before that date, may apply to the Secretary of State, before 1st July 1992, for a derogation.

(2) An application for the purposes of paragraph (1) shall—

- (a) be made in writing;
- (b) specify in respect of which centre and which of the relevant requirements a derogation is sought; and
- (c) be accompanied by a plan of the work intended by the proprietor together with a timetable indicating the period within which the proprietor intends the dispatch or purification centre to comply with the relevant requirement the subject of the application for a derogation.

Method of determining an application for a derogation

5.—(1) After receiving an application for a derogation in respect of a centre which complies with the requirements of regulation 4 the Secretary of State shall send a copy of it to the food authority in whose area the centre is situated.

(2) A food authority which receives a copy of an application sent pursuant to paragraph (1) shall invite the representations of the applicant and, after having regard to any such representations, shall send to the Secretary of State, within 12 weeks of receipt of the copy, a written assessment of the need for the derogation and of the suitability of the plan of the work and the timetable.

(3) A food authority shall, at the same time as providing the written assessment to the Secretary of State, send a copy of it to the applicant, inviting him to send to the Secretary of State, within 4 weeks of the date on which the assessment was sent to the Secretary of State, his written observations on it.

(4) After considering the assessment of the food authority and any observations made pursuant to the invitation mentioned in paragraph (3), the Secretary of State shall either grant or refuse the application for a derogation in respect of all or any of the requirements in respect of which a derogation was sought.

(5) If an application for a derogation is granted the Secretary of State shall—

- (a) designate the premises and the relevant requirements in respect of which the derogation is granted;
- (b) specify the period of the derogation, which shall not in any case expire after 31st December 1995;
- (c) specify in the case of a derogation from the requirement in point 6 of Section II in the Schedule that the derogation shall apply only if and so long as any products intended for human consumption are not contaminated by waste or leakage from waste products; and
- (d) specify in the case of a derogation from the requirement in point 7 of Section II in the Schedule that the derogation shall apply only if and so long as

the products referred to in that point are sheltered from the sun and the elements and from any source of dirt or contamination.

(6) If an application is refused or is granted otherwise than in accordance with the application the Secretary of State shall give written notice to the applicant of the reasons for his decision.

(7) The Secretary of State shall in all cases give written notice of his decision to both the applicant and the food authority which provided the assessment.

Enforcement and execution

6.—(1) Subject to paragraph (2), these Regulations shall be enforced and executed

- (a) as respects each London borough or district in England and Wales, by the Council of that borough or district;
- (b) as respects the City of London (including the Temples), by the Common Council;
- (c) as respects each islands area or district in Scotland, by the islands or district Council; and
- (d) as respects the Isles of Scilly by the Council of the Isles of Scilly.

(2) Where any functions are assigned—

- (a) by an order under section 2 or 7 of the Public Health (Control of Disease) Act 1984^[4] to a port health authority; or
 - (b) by an order under section 172 of the Public Health (Scotland) Act 1897^[5] to a port local authority;
- these Regulations shall be enforced by that authority within its area and not by the authority mentioned in paragraph (1).

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on
24th June 1992.

John Selwyn Gummer

Minister of Agriculture Fisheries and Food

Signed by authority of the Secretary of State for Health

Cumberlege

Parliamentary Under Secretary of State Department of Health

24th June 1992

David Hunt

Secretary of State for Wales

24th June 1992

Hector Monro

Parliamentary Under Secretary of State, Scottish Office

24th June 1992

Notes:

[1] 1990 c. 16 Section 4(1) contains a definition of "the Ministers" which is relevant to the powers being exercised in the making of these Regulations. [back](#)

[2] OJ No. L 34/34, 11.2.92. [back](#)

[3] OJ No. L 268, 24.9.1991, p.1. [back](#)

[4] 1984 c. 22. [back](#)

[5] 1897 c. 38. [back](#)