

Statutory Instrument 1995 No. 184

The Surplus Food Regulations 1995

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STATUTORY INSTRUMENTS

1995No. 184

AGRICULTURE

The Surplus Food Regulations 1995

<i>Made</i>	<i>26th January 1995</i>
<i>Laid before Parliament</i>	<i>30th January 1995</i>
<i>Coming into force</i>	<i>20th February 1995</i>

The Minister of Agriculture, Fisheries and Food and the Secretary of State, being Ministers designated^[1] for the purposes of section 2(2) of the European Communities Act 1972^[2] in relation to the common agricultural policy of the European Community, acting jointly in exercise of the powers conferred on them by that section, and of all other powers enabling them in that behalf, hereby make the following Regulations:—

Title and commencement

1. These Regulations may be cited as the Surplus Food Regulations 1995 and shall come into force on 20th February 1995.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

"authorised officer" means any person (whether or not an officer of that authority) who is authorised by an enforcement authority, either generally or specially, to act in matters arising under these Regulations;

"the Board" means the Intervention Board for Agricultural Produce established under section 6 of the European Communities Act 1972;

"the Commission Regulation" means Commission Regulation (EEC) No. 3149/92 laying down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community^[3] as amended by Commission Regulation (EEC) No. 3550/92^[4] and Commission Regulation (EEC) No. 2826/93^[5];

"the Council Regulation" means Council Regulation (EEC) No. 3730/87 laying down the general rules for the supply of food from intervention stocks to designated organizations for distribution to the most deprived persons in the Community^[6];

"distribution" means, in relation to any surplus food, the provision of that food either in a processed form or in the form of a prepared meal and "distribute" shall be construed accordingly;

"eligible recipient" means a person who is—

- (a) homeless or destitute;
- (b) living in a hostel for the homeless or destitute; or
- (c) in receipt of income support or family credit or disability working allowance under Part VII of the Social Security Contributions and Benefits Act 1992^[7] or under Part VII of the Social Security Contributions and Benefits (Northern Ireland) Act 1992^[8];

"enforcement authority" means—

- (a) in relation to any part of the United Kingdom, the Board;
- (b) in relation to England, the Minister of Agriculture, Fisheries and Food;
- (c) in relation to Scotland or to Wales, the Secretary of State; and
- (d) in relation to Northern Ireland, the Department of Agriculture for Northern Ireland;

"surplus food" means produce which is supplied from intervention stocks for distribution to the most deprived persons in the Community.

(2) In the case of tinned stewed steak surplus food shall not be regarded as having been sold solely because, in the course of its distribution to the most deprived persons in the Community, a charge has been made not exceeding 5 pence a can.

Powers of authorised officers

- 3.—(1) An authorised officer may, on producing, if so required, some duly authenticated document showing his authority, exercise the powers specified in this regulation for the purpose of ascertaining whether an offence under regulation 4(1) below has been or is being committed.
- (2) An authorised officer may enter any premises (other than premises used solely as a dwelling) on which he has reasonable grounds for believing that there is, or has been, any surplus food.
- (3) An authorised officer who has entered any premises by virtue of this regulation may—
- (a) inspect those premises and any surplus food found on those premises;
 - (b) require the person in charge of those premises, or any employee or agent of such person, to produce any record or document in his possession relating to the receipt and distribution of surplus food and to supply such additional information relating thereto as the authorised officer may reasonably request;

- (c) inspect any such record or document and, where any such record or document is kept by means of a computer, have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with that record or document;
- (d) require that copies of, or extracts from, any such record or document be produced;
- (e) seize and retain any such record or document which he has reason to believe may be required as evidence in proceedings under these Regulations and, where any such record or document is kept by means of a computer, require it to be produced in a form in which it may be taken away;
- (f) seize and retain any surplus food—
 - (i) which he has reasonable grounds for believing is being offered, exposed or advertised for sale; or
 - (ii) which any person is reasonably suspected of having in his possession for sale or for distribution to persons who are not eligible recipients.

(4) An authorised officer entering any premises by virtue of this regulation may take with him such other persons as he considers necessary.

(5) Any person in charge of any premises which an authorised officer has entered by virtue of this regulation and any employee or agent of such person shall give to the authorised officer such assistance as the authorised officer may reasonably request so as to enable the authorised officer to exercise any power conferred upon him by this regulation.

(6) In paragraphs (2), (3), (4) and (5) above "premises" includes any vehicle.

Offences and penalties

4.—(1) If any person—

(a) for the purpose of obtaining any surplus food for distribution to any person or in purported compliance with any requirement made by an authorised officer under regulation 3(3)(b) above—

(i) furnishes information which he knows to be false in a material particular; or

(ii) recklessly furnishes information which is false or misleading in a material particular; or

(b) sells any surplus food, or offers, exposes or advertises any surplus food for sale, or has any surplus food in his possession for sale; or

(c) distributes any surplus food to persons who are not eligible recipients, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If any person—

(a) intentionally obstructs an authorised officer acting in the exercise of a power conferred by regulation 3 above; or

(b) fails without reasonable excuse to comply with a requirement of an authorised officer pursuant to regulation 3(3)(b), (d) or (e) above or with a requirement of an authorised officer under regulation 3(5) above, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where an offence under this regulation which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that

offence and shall be liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, the provisions of paragraph (3) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(5) In paragraphs (3) and (4) above the references to a "body corporate" include a partnership in Scotland and, in relation to such partnership, any reference to a director or other officer of a body corporate is a reference to a partner.

Prosecutions

5.—(1) Proceedings for an offence under these Regulations shall not in England and Wales or in Northern Ireland be instituted except by an enforcement authority.

(2) Proceedings in England and Wales and in Northern Ireland for an offence under regulation 4(1) or (2) above may, subject to paragraph (4) below, be brought within a period of six months from the date on which evidence sufficient in the opinion of the enforcement authority to justify proceedings comes to its knowledge.

(3) Proceedings in Scotland for an offence under regulation 4(1) or (2) above may, subject to paragraph (4) below, be commenced within a period of six months from the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to his knowledge.

(4) No such proceedings shall be brought, or commenced, by virtue of this regulation, more than twelve months after the commission of the offence.

(5) A certificate signed—

(a) for the purposes of paragraph (2) above, by or on behalf of the enforcement authority, or

(b) for the purposes of paragraph (3) above, by or on behalf of the prosecutor, and stating the date on which evidence sufficient to justify proceedings came to the knowledge of that enforcement authority or that prosecutor (as the case may be) shall be conclusive evidence of that fact.

(6) A certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(7) In relation to proceedings in Scotland, subsection (3) of section 331 of the Criminal Prosecution (Scotland) Act 1975^[9] (date of commencement of proceedings) shall apply for the purposes of this regulation as it applies for the purposes of that section.

Defence of due diligence

6. In any proceedings for an offence under regulation 4(1)(b) or (c) above it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

Michael Jack

Minister of State, Ministry of Agriculture, Fisheries and Food

24th January 1995

Hector Monro

Parliamentary Under Secretary of State, Scottish Office

26th January 1995

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply throughout the United Kingdom, come into force on 20th February 1995. They supplement provisions of Council Regulation (EEC) No. 3730/87 which lays down general rules for the supply of food from intervention stocks to designated organizations for distribution to the most deprived persons in the Community and of Commission Regulation (EEC) No. 3149/92 (as amended) which lays down detailed rules for the supply of food from intervention stocks for the benefit of the most deprived persons in the Community.

The Regulations—

- (a) confer on authorised officers of an enforcement authority power to enter land or vehicles, to inspect premises and any surplus food found on them, to require the production of records or documents and the supply of information, to inspect and take copies of records and documents and to seize and retain records, documents and surplus food (regulation 3);
- (b) create offences of furnishing false information, selling surplus food and distributing surplus food to persons who are not eligible recipients as defined in the regulations (regulation 4); and
- (c) specify time limits for bringing prosecutions and provide a defence of due diligence (regulations 5 and 6).

No compliance cost assessment has been prepared as these are enforcement regulations which do not impose an administrative burden on businesses.

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Notes:

[1] S.I. 1972/1811. back

[2] 1972 c. 68. back

[3] OJ No. L313, 30.10.92, p.50. back

[4] OJ No. L361, 10.12.92, p.19. back

[5] OJ No. L258, 16.10.93, p.11. back

[6] OJ No. L352, 15.12.87, p.1. back

[7] 1992 c. 4. back

[8] 1992 c. 7. back

[9] 1975 c. 21. back

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