

Order made by the Scottish Ministers, laid before the Scottish Parliament under section 1(8) of the Food and Environment Protection Act 1985, for approval by resolution of the Scottish Parliament within twenty eight days beginning with the day on which the Order was made, not taking into account periods of dissolution or recess for more than four days.

SCOTTISH STATUTORY INSTRUMENTS

2012 No. 135

PUBLIC HEALTH

CONTAMINATION OF FOOD

**The Food Protection (Emergency Prohibitions) (Dalgety Bay)
(Scotland) Order 2012**

Made - - - - *8th May 2012*

Laid before the Scottish Parliament *9th May 2012*

Coming into force in accordance with article 1(1)

The Scottish Ministers make the following Order in exercise of the powers conferred by sections 1(1) and (2) and 24(3) of the Food and Environment Protection Act 1985^(a) and all other powers enabling them to do so, being of the opinion that there exist or may exist circumstances which are likely to create a hazard to human health through human consumption of food and that in consequence, food which is derived or may be in the future derived from fish in the area described in the following Order, is, or may be, or may become, unsuitable for human consumption.

Citation, commencement and interpretation

1.—(1) This Order may be cited as the Food Protection (Emergency Prohibitions) (Dalgety Bay) (Scotland) Order 2012 and comes into force at 1500 hours on 9th May 2012.

(2) In this Order, “relevant time” means the time this Order comes into force.

(a) 1985 c. 48. Section 1(1) was amended by section 51(2)(a) of the Food Safety Act 1990 (c.16). Section 1(2) defines “designating authority”, as amended by paragraph 10(2) of the Schedule to the Scotland Act 1998 (Modification of Functions) Order 1999 (S.I. 1999/1756), paragraph 6(3) of Schedule 5 to the Food Standards Act 1999 (c.28) and paragraph 12(a) of the Schedule to the Scotland Act 1998 (Consequential Modifications) Order 2000 (S.I. 2000/2040). By virtue of section 40(2) of the Food Standards Act 1999, amendments made by Schedule 5 to that Act are to be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46). The functions of the Secretary of State, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. In so far as not transferred, and in so far as relating to food (including drink) including the primary production of food, relevant functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).

Designated circumstances

2. In the opinion of the Scottish Ministers, fish in the area designated in article 3 below may be affected by fragments of radioactive contaminated waste material containing radium 226 and its daughter radionuclides, and if consumed is likely to create a hazard to human health.

Designated area

3. The area described in the Schedule to this Order is designated for the purposes of Part I of the Food and Environment Protection Act 1985.

Activity prohibited in the designated area

4. No person is to fish for or take any fish in the designated area.

Prohibited movement of fish

5. No person is to move any fish out of the designated area.

Restrictions

6. No person is to—

- (a) use any fish taken out of the designated area after the relevant time in the preparation or processing for supply of food or anything from which food could be derived;
- (b) land any fish which was in waters in the designated area after the relevant time;
- (c) supply, or have in possession for supply, any fish which was in the designated area after the relevant time;
- (d) supply, or have in possession for supply, any food or anything from which food could be derived in the preparation or processing of which anything was used in contravention of paragraph (a) of this article; or
- (e) feed to any creature a feeding stuff in the preparation or processing of which anything was used in contravention of paragraph (a) of this article.

RICHARD LOCHHEAD
A member of the Scottish Executive

St Andrew's House,
Edinburgh
8th May 2012

SCHEDULE

Article 3

THE DESIGNATED AREA

The areas of land and sea below mean high water springs in Dalgety Bay (including New Harbour) in Fife which are bounded from point national grid reference NT162828 (Donibristle Bay), extending in an easterly direction in a straight line to point national grid reference NT176831 (Braefoot Point), then extending in a north-easterly direction following the line of the mean high water springs to the farthest point of the mean high water springs on the foreshore of Dalgety Bay, and returning in an anticlockwise (and generally westerly) direction along the line of the mean high water springs around Dalgety Bay, and returning to point national grid reference NT162828 (Donibristle Bay).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order contains emergency prohibitions restricting various activities in order to prevent human consumption of food which is or may be rendered unsuitable for that purpose by virtue of the presence of fragments of radioactive contaminated waste material containing radium 226 and its daughter radionuclides, which could be taken up by fish.

The Order relates to fish, which is defined by section 24 (interpretation) of the Food and Environment Protection Act 1985 (“the Act”) and means all species of fish and shellfish, including crustaceans and molluscs of any kind. It designates an area of Dalgety Bay, Fife and an area of sea off that Bay, within which fishing for and taking fish is prohibited (articles 3 and 4 and the Schedule). It prohibits the movement of fish out of that area (article 5). Other restrictions are imposed in relation to the use of any fish taken from that area (article 6). A map showing the designated area under this Order is appended to this note for illustrative purposes only.

It is an offence by virtue of section 1(6) of the Act, as read with paragraph 4 of Schedule 1 to the Act, to contravene any of the prohibitions contained in this Order, or to cause or permit any other person to do so, anywhere in the United Kingdom or in United Kingdom waters.

Under section 21 of the Act the penalty for contravening an emergency prohibition is—

- (a) on summary conviction, a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, an unlimited fine or imprisonment for a term not exceeding two years or both.

Powers of enforcement in relation to emergency prohibitions are conferred by section 4 of, and Schedule 2 to, the Act. Obstruction of an enforcement officer is an offence under paragraph 10 of that Schedule.

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£4.00

S5515 05/2012 325515T 19585

ISBN 978-0-11-101696-1



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