

Subsidiary Legislation made under ss. 6 and 58A.

Poultry Meat (Water Content) Regulations 1988

LN.1988/010

Commencement

1.8.1988

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Title and commencement.

1. These regulations may be cited as the Poultry Meat (Water Content) Regulations 1988 and shall come into operation on the 1st day of March, 1988.

Interpretation.

2. In these regulations, unless the context otherwise requires-

‘analysis’ and ‘counter-analysis’ mean analysis and counter analysis respectively performed pursuant to article 4 of the Council regulation;

‘Community provision’ means any provision of the Council regulation or the Commission regulation;

‘the Commission regulation’ means the regulation of the Commission of the European Communities of which full title, reference and amending instruments are set out in the Schedule to these regulations;

‘the Council regulation’ means the regulation of the Council of the European Communities of which the full title, reference and amending instruments are set out in the Schedule to these regulations;

‘enforcement authority’ means an authority so designated for the purposes of article 6 of the Council regulation;

‘the Government’ means the Government of Gibraltar;

‘importer’ in relation to an imported article, includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of the article or in any way entitled to the custody or control of it;

‘the Act’ means the Food and Drugs Act;

‘poultry carcasses’ means frozen or deep-frozen whole eviscerated carcasses of chickens, hens or cocks, with or without edible offal;

‘sell’ includes offer or expose for sale and includes have in possession for sale.

Enforcement authority.

3. For the purposes of article 6 of the Council regulation, the Government is hereby designated as the enforcement authority and as such shall secure the enforcement and execution of the Community provisions and the provisions of these regulations.

Powers of authorised officers.

4.(1) For the purpose of enforcing or executing any Community provision or any provision of these regulations, an authorised officer shall, on producing, if so required, some duly authenticated document showing his authority, have a right -

- (a) to enter all reasonable hours any premises (other than premises used only as a dwelling) where any activity regulated by a Community provision is being, or is reasonably suspected of being, carried on;
- (b) to conduct on such premises such tests and checks as may reasonably be necessary;
- (c) to require any person not to remove or cause to be removed from such premises such number of poultry carcasses as may be reasonable in the circumstances pending the result of any test, check, analysis or counter-analysis;
- (d) to detain or cause to be detained at any place suitable for the purpose such number of poultry carcasses as may be reasonable in the circumstances pending the result of any test, check, analysis or counter-analysis;
- (e) notwithstanding anything in section 35(1) of the Food and Drugs Act, to carry out initial checks on the water content of any poultry carcass in accordance with the rapid detection method described in Annex II to the Council regulation, as provided in article 4(1) of that regulation;
- (f) to require the production of the register which slaughter houses are required to keep by virtue of article 2(1) of the Council regulation.

(2) The provision of paragraph (1) of this regulation shall apply in relation to any ship, aircraft or vehicle and any land or place other than premises (other than any ship, aircraft, vehicle, land or place used only as a dwelling) as they apply in relation to premises.

(3) An authorised officer entering any premises, ship, aircraft, vehicle, land or other place by virtue of this regulation may take with him such other persons and such equipment as are reasonably necessary.

Identification of slaughter-house from which poultry carcass originates.

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5.(1) There shall be made on, or visibly beneath, the wrapper of every poultry carcase, or on a ticket or notice attached to it, a marking sufficient to identify to an authorised officer the slaughter house from which the carcase originates.

- (2) Poultry carcasses sent in large sealed packages -
- (a) from a slaughterhouse to cutting premises for cutting or boning therein, or
 - (b) from a slaughterhouse or cutting premises to a manufacturer for the purposes of his manufacturing business, or
 - (c) from a slaughter house or cutting premises to a caterer for the purposes of his catering business,

shall be exempt from the requirement to be individually marked in accordance with paragraph (1) of this regulation, if there is made on the external surface of each large package a marking sufficient to identify to an authorised officer the slaughterhouse from which the poultry carcasses in that package originate.

(3) In this regulation 'cutting premises' means premises used for the purpose of cutting or boning poultry meat intended for sale for human consumption, which is not subject to any preservation process on those premises other than chilling or freezing, but does not include any premises used for the purpose of catering or sales by retail.

(4) No person shall sell any poultry carcase which does not comply with this regulation.

Inspection of imported poultry carcasses.

6.(1) Where an importer during business hours makes a request for sound reasons to the Government to perform outside its business hours such inspections as may be necessary to fulfil its duties in relation to imported poultry carcasses under these regulations, the Government shall provide such services.

(2) Where the Government provides the services specified in paragraph (1) of this regulation it may make such reasonable charges for providing the services as it may from time to time determine, but such charges shall not include any costs associated with the storing, transporting or analysis of any sample.

(3) Any charge made by the Government by virtue of paragraph (2) of this regulation shall be payable by the importer.

(4) Any charge due to the Government by virtue of this regulation shall be recoverable by it summarily as a civil debt.

Notice of intended prosecution.

7. Where the Government intends to bring proceedings against any person for an offence under these regulations in respect of a contravention of article 1(1) of the Council regulation, the Government shall, not less than 14 days before the institution of proceedings, cause to be served on the person to be charged a notice of intended prosecution.

Analysis.

8.(1) An authorised officer who procures a sample of poultry carcasses, shall within 7 days of receipt by him of the public analyst's certificate specifying the result of the analysis, serve a copy of the certificate on the person from whom the sample was taken or purchased.

(2) If the Government intends to bring proceedings for an offence under these regulations in respect of a contravention of article 1(1) of the Council regulation against any person who has not already been served with a copy of the public analyst's certificate specifying the result of the analysis, under paragraph (1) of this regulation, the Government shall, not less than 14 days before the institution of proceedings, cause to be served on the person to be charged a copy of that certificate.

(3) Section 36 of, and the Schedule 5 to, the Food and Drugs Act (which contain provisions as to samples taken for analysis) shall not apply to a sample of poultry carcasses procured for the purpose of enforcing the Community provisions or the provisions of these regulations.

Counter analysis.

9.(1) Any request for a counter-analysis pursuant to article 4(2) of the Council regulation shall -

- (a) be made in writing to the Government, and
- (b) be made within 14 days of the date on which a copy of the public analyst's certificate specifying the result of the analysis was served on the person making the request, except that, in the case of a person against whom proceedings are brought for an offence under these regulations in respect of a contravention of article 1(1) of the Council regulation, a request may be made within 14 days of the date on which a notice of intended prosecution was served on him.

(2) If a request for counter-analysis is made, the authorised officer shall submit the poultry carcasses which are to be subjected to counter-analysis to the Government Chemist in the United Kingdom.

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(3) The Government Chemist shall analyse as soon as practicable any poultry carcasses submitted to him in pursuance of paragraph (2) of this regulation and shall transmit to the authorised officer who submitted the poultry carcasses a certificate specifying the result of the counter-analysis.

(4) The authorised officer shall, within 7 days of receipt by him of the certificate specifying the result of the counter-analysis, serve a copy of the certificate of

- (a) the person who requested a counter-analysis, and
- (b) any other person against whom proceedings have been brought for an offence under these regulations in respect of a contravention of article 1(1) of the Council regulation relating to those poultry carcasses.

(5) If, in a case where a counter-analysis has been made, the Government intends to bring proceedings for an offence under these regulations in respect of a contravention of article 1(1) of the Council regulation against any person who has not already been served with a copy of the certificate specifying the result of the counter-analysis under paragraph (4) of this regulation, the Government shall before the institution of proceedings, cause to be served on that person a copy of that certificate.

Method of analysis and counter-analysis.

10. In accordance with article 4(2) of the Council regulation any determination of the water content of poultry carcasses by chemical analysis shall be carried out according to the method described in Annex III to the Council regulation.

Offences and penalties.

11.(1) Any person who contravenes or fails to comply with regulation 5 of these regulations or any Community provision specified in paragraph (2) of this regulation shall be guilty of an offence and subject to paragraph (3) of this regulation shall be liable on summary conviction to a fine not exceeding £1,000.

- (2) The Community provisions referred to in paragraph (1) of this regulation are:
- (a) article 1 of the Council regulation (which permits the marketing of poultry carcasses only if the water content absorbed during preparation does not exceed a prescribed limit);
 - (b) article 2 of the Commission regulation (which contains requirements relating to poultry carcasses deemed not to comply with the Council regulation);

- (c) article 4 of the Commission regulation (which contains requirements relating to the manner of marking or labelling).

(3) Any person who wilfully obstructs an authorised officer acting in execution of the Community provisions or of these regulations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £400.

Offences due to fault of other person.

12. Where the commission by any person of an offence under these regulations is due to the act or default of some other person that other person shall be guilty of the offence. A person may be charged with and convicted of an offence by virtue of this regulation whether or not proceedings are taken against the first mentioned person.

Defence of due diligence.

13.(1) In any proceedings for an offence under these regulations it shall be a defence for the defendant to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(2) If in any case the defence provided by paragraph (1) of this regulation involves the allegation that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the defendant shall not, without leave of the court, be entitled to rely on that defence unless he served on the prosecutor at least 7 clear days before the hearing a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

Application of various provisions of the Act.

14. Section 51 (which relates to the conditions under which a warranty may be pleaded as a defence) and section 52 (which prescribes offences in relation to warranties and certificates of analysis) of the Act shall apply for the purposes of these regulations as if reference therein to proceedings or a prosecution under the Act included references to proceedings brought for an offence under these regulations.

Service notices and other documents.

15.(1) Any notice or other document required or authorised by these regulations to be served on any person shall be sufficiently served if it is delivered to him personally or left at his last known place of abode or business or sent to him by post in a letter addressed to him at the aforesaid place of abode or business.

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(2) Any notice or other document required or authorised by these regulations to be served on an incorporated company or body shall be sufficiently served if served on the secretary or clerk of the company or body. For the purposes of these regulations the proper address of such secretary or clerk shall be that of the registered or principal office of the company or body.

Failure to comply with requirement to serve notice or other document.

16. A defendant in proceedings for an offence under these regulations in respect of a contravention of article 1(1) of the Council regulation shall not be convicted of the offence if he proves that any notice or other document required to be served on him by regulation 7, 8(1) or (2), or 9(4) or (5) of these regulations was not served on him in compliance with the appropriate requirement, unless the court is satisfied either-

- (a) that the Government or, as the case may be, the authorised officer could not with reasonable diligence have ascertained the name and address of the defendant in time for the notice or other document to be served on the defendant in compliance with the appropriate requirement, or
- (b) that the defendant by his own conduct or by the conduct of his employee contributed to the failure of the Government or, as the case may be, the authorised officer to comply with the appropriate requirement.

THE SCHEDULE
COMMUNITY PROVISIONS

Regulations containing Community provisions	Official Journal of the European Communities: References
1. Council Regulation (EEC) No 2967/76 of 23 November 1976 laying down common standards for the water content of frozen and deep-frozen chickens, hens and cocks, as amended by—	OJ No L 339, 8.12.76, p1
(a) Council Regulation (EEC) No 1691/77 of 19 July 1977	OJ No L 188, 28.7.77,p10
(b) Council Regulation (EEC) No 641/79 of 29 March 1979	OJ No L82, 31.3.79, p4
(c) Commission Regulation (EEC) No 2632/80 of 14 October 1980	OJ No L270, 15.10.80, p14
(d) Council Regulation (EEC) No 2835/80 of 30 October 1980, read with the Corrigendum to (EEC) No 2835/80	OJ No L 292, 1.11.80, p75
(e) Commission Regulation (EEC) No 3204/83 of 14 November 1983	OJ No L315,15.11.83,p17.
2. Commission Regulation (EEC) No 2785/80 of 30 October 1980 introducing detailed rules for implementing Regulation (EEC) No 2967/76 laying down common standards for the water content of frozen chickens, hen and cocks, as amended by Commission Regulation (EEC) No 3134/81 of 30 October 1981	OJ No L288, 31.10.180, p13. OJ No L312, 31.10.81, p59