
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 439

FOOD

The Flavourings in Food (Scotland) Regulations 2010

Made - - - - - *8th December 2010*
Laid before the Scottish
Parliament - - - - - *10th December 2010*
Coming into force - - - - - *20th January 2011*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 17(2), 26(1)(a) and (b) and (3), and 48(1) of the Food Safety Act 1990(1) and all other powers enabling them to do so.

In accordance with section 48(4A) of the Food Safety Act 1990, the Scottish Ministers have had regard to relevant advice given by the Food Standards Agency(2).

There has been consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(3).

Citation, extent and commencement

1. These Regulations may be cited as the Flavourings in Food (Scotland) Regulations 2010, extend to Scotland only and come into force on 20th January 2011.

Interpretation

2.—(1) In these Regulations—

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- (1) 1990 c.16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; sections 16(1), 17(2) and 48(1) were amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c.28); section 17(2) was also amended by paragraph 12 of Schedule 5 to the 1999 Act; section 26(3) was amended by Schedule 6 to the 1999 Act; section 48(4) is disapplied in respect of these Regulations by virtue of section 48(4C) which was inserted by S.I. 2004/2990; by virtue of section 40(2) of the 1999 Act, 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 1998 Act. In so far as not so 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).
- (2) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.
- (3) O.J. L 31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468 with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (O.J. L 188, 18.7.2009, p.14).

“the Act” means the Food Safety Act 1990; and

“the EU Regulation” means Regulation (EC) No. 1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No. 1601/91, Regulations (EC) No. 2232/96 and (EC) No. 110/2008 and Directive 2000/13/EC(4).

(2) Any other expression used in these Regulations and in the EU Regulation has the same meaning in these Regulations as it bears in the EU Regulation.

(3) Any reference in regulation 3 to a numbered Article is a reference to the Article so numbered in the EU Regulation.

Offences and penalties

3.—(1) A person who contravenes or fails to comply with any of the EU provisions specified in paragraph (2) as read with the transitional arrangements contained in Article 30 is guilty of an offence.

(2) The EU provisions are—

- (a) Article 4 (general conditions for use of flavourings or food ingredients with flavouring properties);
- (b) Article 5 (prohibition of non-compliant flavourings and/or non-compliant food);
- (c) Article 6(1) and (2) (restrictions on the presence of certain substances);
- (d) Article 7 (use of certain source materials);
- (e) Article 10 (Community list of flavourings and source materials);
- (f) Article 14(1) (labelling of flavourings not intended for sale to the final consumer);
- (g) Article 17 (labelling of flavourings intended for sale to the final consumer); and
- (h) Article 19(2) and (3) (reporting obligations on food business operators).

(3) Any person convicted of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Enforcement authorities

4. It is the duty of each food authority within its area to execute and enforce these Regulations and the EU Regulation.

Application of various sections of the Food Safety Act 1990

5.—(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part of it is to be construed as a reference to these Regulations:—

- (a) section 20 (offences due to fault of another person);
- (b) section 21 (defence of due diligence)(5) with the modification that—
 - (i) subsections (2) to (4) shall apply in relation to an offence of contravening regulation 3(2)(a) to (g) as they apply in relation to an offence under sections 14 or 15; and
 - (ii) in subsection (4) the references to “sale” are deemed to include references to “placing on the market”;

(4) O.J. L 354, 31.12.2008, p.34.

(5) Section 21 was amended by S.I. 2004/3279.

- (c) section 30(8) (which relates to documentary evidence);
- (d) section 35(1) (punishment of offences), in so far as it relates to offences under section 33(1) as applied by paragraph (3)(b);
- (e) section 35(2) and (3)(6), in so far as it relates to offences under section 33(2) as applied by paragraph (3)(c);
- (f) section 36 (offences by bodies corporate); and
- (g) section 36A (offences by Scottish partnerships)(7).

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the references in subsection (1) to the Act are to be construed as including references to the EU Regulation.

(3) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act is to be construed as including a reference to the EU Regulation and these Regulations:—

- (a) section 3 (presumption that food is intended for human consumption) with the modification that the references to “sold” and “sale” are deemed to include references to “placed on the market” and “placing on the market” respectively;
- (b) section 33(1) (obstruction etc. of officers);
- (c) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above” is deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (b); and
- (d) section 44 (protection of officers acting in good faith).

(4) Section 34 of the Act (time limit for prosecutions) applies to offences under regulation 3 as it applies to offences punishable under section 35(2) of the Act.

Condemnation of food

6. Where any food is certified by a food analyst as being food which it is an offence under these Regulations to place on the market, that food shall be treated for the purposes of section 9 of the Act (under which food may be seized and destroyed under an order of a justice of the peace) as failing to comply with food safety requirements.

Amendments to the Food Labelling Regulations 1996

7.—(1) The Food Labelling Regulations 1996(8) are amended in accordance with paragraphs (2) to (4).

(2) In regulation 2(1) (interpretation)—

- (a) for the definition of “the additives regulations” substitute—

““the additives regulations” means the Food Additives (Scotland) Regulations 2009(9), Regulation (EC) No. 1333/2008 of the European Parliament and of the Council on food additives(10) and Regulation 1334/2008 on food flavourings;”;

- (b) for the definition of “flavouring” when used as a noun substitute—

(6) Section 35(3) was amended by S.I. 2004/3279.

(7) Section 36A was inserted by paragraph 16 of Schedule 5 to the Food Standards Act 1999 (c.28).

(8) S.I. 1996/1499; amended by S.I. 1998/1398, 1999/747, 1136 and 1483 and S.S.I. 2000/83, 2002/524, 2003/578, 2004/269, 395 and 472, 2005/456 and 222, 2007/534, 2008/129, 180 and 395, 2009/328, 374 and 435 and 2010/48 and 327.

(9) S.S.I. 2009/436.

(10) O.J. L 354, 31.12.2008, p.16.

- “the noun “flavouring” bears the same meaning as “flavourings” as defined in Article 3(2)(a) of Regulation 1334/2008 on food flavourings;”;
- (c) omit the definitions of “flavouring preparation”, “flavouring substance”, “process flavouring” and “smoke flavouring”; and
- (d) after the definition of “recommended daily allowance” insert the following definition:—
 ““Regulation 1334/2008 on food flavourings” means Regulation (EC) No. 1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No. 1601/91, Regulations (EC) No. 2232/96 and (EC) No. 110/2008 and Directive 2000/13/EC(11);”.
- (3) In regulation 14 (names of ingredients)—
- (a) for paragraph (5) substitute—
 “(5) Subject to paragraph (5A) and to regulation 34B, where an ingredient being a flavouring is added to or used in a food it shall be identified by either—
- (a) the word “flavouring” or, where more than one such ingredient is used, “flavourings”, or
- (b) a more specific name or description of the flavouring; or
- (c) the expression “smoke flavouring(s)” or “smoke flavouring(s) produced from (*insert name of food or food category or source*)” if the flavouring component contains smoke flavouring as defined by Article 3(2)(f) of Regulation 1334/2008 on food flavourings and imparts a smoky flavour to the food.”;
- (b) for paragraph (6) substitute—
 “(6) The word “natural” to describe an ingredient being a flavouring may only be used in accordance with Article 16 of Regulation 1334/2008 on food flavourings as read with Article 30 of that Regulation.”; and
- (c) omit paragraphs (7) and (8).
- (4) Omit regulation 49(13) and (14).

Revocations

8. The following Regulations are revoked:—
- (a) the Flavourings in Food Regulations 1992(12); and
- (b) the Flavourings in Food (Amendment) Regulations 1994(13).

St Andrew’s House,
 Edinburgh
 8th December 2010

SHONA ROBISON
 Authorised to sign by the Scottish Ministers

(11) O.J. L 354, 31.12.2008, p.34.
 (12) S.I. 1992/1971.
 (13) S.I. 1994/1486.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the execution and enforcement of Regulation (EC) No. 1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No. 1601/91, Regulations (EC) No. 2232/96 and (EC) No. 110/2008 and Directive 2000/13/EC (O.J. L 354, 31.12.2008, p.34) (“the EU Regulation”).

These Regulations provide that it is an offence to contravene the requirements of the EU Regulation by—

- (a) using flavourings or food ingredients with flavouring properties in or on foods if they pose a risk to the health of consumers or if their use misleads consumers (regulation 3(2)(a));
- (b) placing on the market any flavouring or food ingredient with flavouring properties or food in which they are present if their use does not comply with the EU Regulation (regulation 3(2)(b));
- (c) adding certain proscribed substances to food (regulation 3(2)(c));
- (d) using certain proscribed source materials for the production of flavourings or food ingredients with flavouring properties, or using certain specified source materials other than in accordance with prescribed conditions (regulation 3(2)(d));
- (e) placing on the market or using certain specified flavourings or source materials unless they are included in the authorised EU list (regulation 3(2)(e));
- (f) labelling flavourings not intended for sale to the final consumer other than in accordance with the conditions set out in the EU Regulation (regulation 3(2)(f));
- (g) labelling flavourings that are intended for sale to the final consumer other than in accordance with the conditions set out in the EU Regulation (regulation 3(2)(g)); and
- (h) failing to provide certain specified information when required (regulation 3(2)(h)).

These Regulations also—

- (a) designate the authorities having the duty to enforce these Regulations and the EU Regulation (regulation 4);
- (b) apply certain provisions of the Food Safety Act 1990 for the purposes of these Regulations (regulation 5);
- (c) provide that where food does not comply with the EU Regulation such that it would be an offence under these Regulations to place it on the market, it is to be treated as failing to comply with food safety requirements for the purposes of seizure and destruction under section 9 of the 1990 Act (regulation 6); and
- (d) make amendments to the Food Labelling Regulations 1996 (regulation 7).

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency (Scotland), 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ and online at www.legislation.gov.uk.