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STATUTORY INSTRUMENTS

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**2020 No. 43**

**The Food for Specific Groups (Food for Special Medical Purposes for Infants, Infant Formula and Follow-on Formula) (Information and Compositional Requirements) (Amendment etc.) (England) Regulations 2020**

**PART 2**

**Infant Formula and Follow-on Formula**

**Interpretation of Part 2**

**2.—(1) In this Part—**

“Delegated Regulation 127” means Commission Delegated Regulation (EU) 2016/127 of 25 September 2015 supplementing Regulation (EU) No. 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding;

“food authority” means—

- (a) a county council;
- (b) a metropolitan district council;
- (c) a non-metropolitan district council;
- (d) a London borough council;
- (e) the Common Council of the City of London (in its capacity as a local authority);
- (f) the Council of the Isles of Scilly;

“specified EU law requirement” means any provision of Delegated Regulation 127 specified in column 1 of the table in Schedule 1, as read with the provisions specified in the corresponding entry in column 2 of that table.

(2) Any reference to a provision of Delegated Regulation 127 is a reference to that provision as amended from time to time.

(3) Expressions used both in this Part of these Regulations and in Delegated Regulation 127 have the same meaning in this Part as they have in Delegated Regulation 127.

**Enforcement**

**3.** Each food authority must execute and enforce this Part of these Regulations within its area.

**Application of provisions of the 1990 Act**

4.—(1) Section 10(1) and (2) of the 1990 Act (improvement notices) applies, with the modification (in the case of section 10(1)) specified in Part 1 of Schedule 2, for the purposes of—

- (a) enabling an improvement notice to be served on a person requiring that person to secure compliance with any specified EU law requirement; and
- (b) making a failure to comply with a notice referred to in sub-paragraph (a) an offence.

(2) Section 32(1) to (8) of the 1990 Act<sup>(1)</sup> (powers of entry) applies, with the modifications (in the case of section 32(1)) specified in Part 2 of Schedule 2, for the purposes of enabling an authorised officer of an enforcement authority—

- (a) to exercise a power of entry to ascertain whether food that does not comply with a specified EU law requirement is, or has been, sold;
- (b) to exercise a power of entry to ascertain whether there is any evidence of any contravention of a specified EU law requirement.

(3) Section 35 of the 1990 Act (punishment of offences) applies, with the modifications specified in Part 3 of Schedule 2, for the purposes of specifying the punishment of an offence committed under section 10(2) as applied by paragraph (1)(b).

(4) Section 37 of the 1990 Act (appeals) applies, with the modifications specified in Part 4 of Schedule 2, for the purpose of enabling a person to appeal a decision to serve a notice referred to in paragraph (1)(a).

(5) Section 39 of the 1990 Act (appeals against improvement notices) applies, with the modifications (in the case of section 39(1) and (3)) specified in Part 5 of Schedule 2, for the purpose of dealing with appeals against a decision to serve a notice referred to in paragraph (1)(a).

(6) The provisions of the 1990 Act specified in paragraph (7) (“the paragraph (7) provisions”) apply, with the modifications specified in Part 6 of Schedule 2, for the purposes of this Part of these Regulations, insofar as they relate to the provisions of the 1990 Act specified in and modified by paragraphs (1) to (5), and any reference in the paragraph (7) provisions to a section of the 1990 Act, including a reference to “any of the preceding provisions of this Part”, is to be read as a reference to such sections of the 1990 Act as applied by this Part of, and modified by Schedule 2 to, these Regulations.

(7) The provisions of the 1990 Act are—

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21<sup>(2)</sup> (defence of due diligence);
- (d) section 22 (defence of publication in the course of business);
- (e) section 29 (procurement of samples);
- (f) section 30<sup>(3)</sup> (analysis etc. of samples);
- (g) section 33<sup>(4)</sup> (obstruction etc. of officers);
- (h) section 36 (offences by bodies corporate);
- (i) section 36A<sup>(5)</sup> (offences by Scottish partnerships);
- (j) section 44 (protection of officers acting in good faith);

(1) There are amendments to section 32(5) and (6), but none is relevant.

(2) Section 21 was amended by [S.I. 2004/3279](#).

(3) Section 30 was amended by paragraphs 7 and 8 of Schedule 5 to the 1999 Act.

(4) Section 33 was amended by paragraph 3(1) and (4) of the Schedule to the Food (Scotland) Act [2015 \(asp 1\)](#).

(5) Section 36A was inserted by paragraph 16 of Schedule 5 to the 1999 Act.

- (k) section 53 (general interpretation).

**Revocations, savings and transitional provisions relating to infant formula and follow-on formula**

5.—(1) The instruments specified in column 1 of the table in Schedule 3 are revoked to the extent specified in column 3 of that table, subject to paragraph (2).

(2) The instruments specified in column 1 of the table in Schedule 3 continue to have effect (so far as otherwise revoked to the extent specified in column 3 of that table)—

- (a) until 21st February 2021 in respect of infant formula and follow-on formula manufactured from protein hydrolysates;
- (b) for the purposes of paragraph (3)(b).

(3) Infant formula and follow-on formula which does not comply with a specified EU law requirement may continue to be marketed until stocks of such food are exhausted, provided that—

- (a) it was placed on the market or labelled—
  - (i) before 22nd February 2020; or
  - (ii) before 22nd February 2021 in the case of infant formula and follow-on formula manufactured from protein hydrolysates; and
- (b) the conditions specified in the following provision of the Infant Formula and Follow-on Formula (England) Regulations 2007(6) are met—
  - (i) regulation 3(1) (prohibition on the marketing of infant formula unless certain conditions are met) in the case of infant formula;
  - (ii) regulation 3(2) (prohibition on the marketing of follow-on formula unless certain conditions are met) in the case of follow-on formula.

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(6) [S.I. 2007/3521](#), the relevant amending instrument is [S.I. 2008/2445](#).