
SCOTTISH STATUTORY INSTRUMENTS

2007 No. 549

FOOD

**The Infant Formula and Follow-on
Formula (Scotland) Regulations 2007**

Made - - - - *6th December 2007*
*Laid before the Scottish
Parliament* - - - - *6th December 2007*
Coming into force - - *11th January 2008*

The Scottish Ministers make the following Regulations (except regulations 2(5) and 24) in exercise of the powers conferred by sections 16(1)(e), 17(1), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990^{M1}, and (with regard to regulation 2(5)) paragraph 1A of Schedule 2 to, and (with regard to regulation 24) section 2(2) of, the European Communities Act 1972^{M2} and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for certain references to Annexes to Commission Directive 2006/141/EC on infant formulae and follow on formulae and amending Directive 1999/21/EC^{M3} to be construed as references to those Annexes as amended from time to time.

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^{M4}.

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^{M5}.

Marginal Citations

M1 1990 c. 16. Section 1(1) and (2) (definition of “food”) was substituted by the [Food Safety Act 1990 \(Amendment\) Regulations 2004 \(S.I. 2004/2990\)](#); sections 16(1), 17(1) and 48(1) were amended by paragraph 8 of Schedule 5 to the [Food Standards Act 1999 \(c. 28\)](#) (“the 1999 Act”); section 26(3) was amended by the 1999 Act, Schedule 6: amendments made by Schedule 5 to the 1999 Act which extend to Scotland shall be taken as pre commencement enactments for the purposes of the [Scotland Act 1998 \(c. 46\)](#) (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State, in so far as exercisable 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, those functions were transferred

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to the Scottish Ministers by the [Scotland Act 1998 \(Transfer of Functions to the Scottish Ministers etc.\) Order 2005 \(S.I. 2005/849\)](#) (“the 2005 Order”).

- M2** [1972 c. 68](#) (“the 1972 Act”). Section 2(2) was amended by the 1998 Act, Schedule 8, paragraph 15(3). The function conferred on the Minister of the Crown under section 2(2) of the 1972 Act, so far as within devolved competence, was transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act, and insofar as not so transferred and insofar as relating to food (including drink) including the primary production of food those functions were transferred to the Scottish Ministers by the 2005 Order; [paragraph 1A](#) was inserted by the [Legislative and Regulatory Reform Act 2006 \(c. 51\), section 28](#).
- M3** O.J. No. L 401, 30.12.06, p.1.
- M4** [Section 48\(4A\)](#) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.
- M5** O.J. No. L 31, 1.2.2002, p.1, as amended by Regulation (EC) No. 1642/2003 (O.J. No. L 245, 29.9.03, p.4) and by Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 8.4.2006, p.3).

Citation, commencement and extent

1. These Regulations—
 - (a) may be cited as the Infant Formula and Follow on Formula (Scotland) Regulations 2007;
 - (b) come into force—
 - (i) in the case of regulation 31(2), on 1st January 2010; and
 - (ii) otherwise on 11th January 2008; and
 - (c) extend to Scotland only.

Interpretation

- 2.—(1) In these Regulations—
 - “the Act” means the Food Safety Act 1990;
 - “the Agency” means the ^[F1]Food Standards Scotland];
 - ^[F2]“the Directive” means Commission [Directive 2006/141/EC](#) on infant formulae and follow-on formulae and amending [Directive 1999/21/EC](#);
 - “health care system” means institutions or organisations engaged, directly or indirectly, in health care for mothers, infants and pregnant women, including nurseries or child care institutions and health workers in private practice.
- (2) Subject to paragraph (3), any expression other than one defined in paragraph (1) that is used both in these Regulations and in the Act has the meaning it bears in the Act.
- (3) Any expression used both in these Regulations and in the Directive has the meaning that it bears in the Directive.
- (4) In these Regulations any reference to a numbered Annex is a reference to the Annex bearing that number in the Directive.
- (5) In these Regulations any reference to an Annex to the Directive is a reference to that Annex as amended from time to time.

Textual Amendments

- F1** Words in [reg. 2\(1\)](#) substituted (1.4.2015) by [The Food \(Scotland\) Act 2015 \(Consequential and Transitional Provisions\) Order 2015 \(S.S.I. 2015/100\)](#), arts. 1(2), 2, **sch. para. 19**

- F2** Words in reg. 2(1) substituted (28.2.2014) by [The Infant Formula and Follow-on Formula \(Scotland\) Amendment Regulations 2014 \(S.S.I. 2014/12\)](#), regs. 1, **2(2)**

Prohibition on the marketing of infant formula or follow-on formula unless certain conditions are met

3.—(1) No person shall market infant formula which contravenes or fails to comply with regulation 5, 6, 8, 10, 11, 12, 14(1), (2) or (3), 15, 17 ^{F3}, 19 or 20(1)].

(2) No person shall market follow on formula which contravenes or fails to comply with regulation 5, 7, 9, 10, 11, 12, 14(1), (2) or (3), 16, 18 ^{F4}, 19 or 20(2)].

Textual Amendments

- F3** Words in reg. 3(1) substituted (4.11.2008) by [The Infant Formula and Follow-on Formula \(Scotland\) Amendment Regulations 2008 \(S.S.I. 2008/322\)](#), regs. 1, **2(2)(a)**
- F4** Words in reg. 3(2) substituted (4.11.2008) by [The Infant Formula and Follow-on Formula \(Scotland\) Amendment Regulations 2008 \(S.S.I. 2008/322\)](#), regs. 1, **2(2)(b)**

Prohibition on the marketing of products other than infant formula for normal healthy infants

4. No person shall market or otherwise represent a product as suitable for satisfying by itself the nutritional requirements of normal healthy infants during the first months of life until the introduction of appropriate complementary feeding unless that product is infant formula.

Substances in such quantity as to endanger the health of infants and young children

5. Infant formula and follow on formula shall not contain any substance in such quantity as to endanger the health of infants and young children.

Protein sources and other food ingredients suitable for infants from birth (infant formula)

6.—(1) Infant formula shall be manufactured from—

- (a) the protein sources specified in point 2 of Annex I; and
- (b) other food ingredients the suitability of which for particular nutritional use by infants from birth has been established by generally accepted scientific data and demonstrated in accordance with paragraph (2).

(2) Suitability shall be demonstrated through a systematic review of the available data relating to the expected benefits and to safety considerations as well as, where necessary, appropriate studies, performed following generally accepted expert guidance on the design and conduct of such studies.

Protein sources and other food ingredients suitable for infants aged over six months (follow on formula)

7. Follow on formula shall be manufactured from—

- (a) the protein sources specified in point 2 of Annex II; and
- (b) other food ingredients the suitability of which for particular nutritional use by infants aged over 6 months has been established by generally accepted scientific data and demonstrated in accordance with regulation 6(2).

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Changes to legislation: There are currently no known outstanding effects for the The Infant Formula and Follow-on Formula (Scotland) Regulations 2007 (revoked). (See end of Document for details)

Compositional criteria for infant formula

8.—(1) Subject to paragraphs (2) and (3), infant formula shall comply with the compositional criteria set out in Annex I taking into account the specifications in Annex V.

(2) In the case of infant formula manufactured from cows' milk proteins [^{F5}or goats' milk proteins] specified in point 2.1 of Annex I with a protein content between the minimum and 0.5g/100kJ (2g/100 kcal) the suitability of the infant formula for satisfying by itself the nutritional requirements of normal healthy infants during the first months of life until the introduction of appropriate complementary feeding shall be demonstrated through appropriate studies, performed following generally accepted expert guidance on the design and conduct of such studies.

(3) In the case of infant formula manufactured from protein hydrolysates specified in point 2.2 of Annex I with a protein content between the minimum and 0.56g/100kJ (2.25g/100 kcal)—

- (a) the suitability of the infant formula for the particular nutritional use by infants shall be demonstrated through appropriate studies, performed following generally accepted expert guidance on the design and conduct of such studies; and
- (b) the infant formula shall be in accordance with the appropriate specifications set out in Annex VI.

Textual Amendments

F5 Words in [reg. 8\(2\)](#) inserted (28.2.2014) by [The Infant Formula and Follow-on Formula \(Scotland\) Amendment Regulations 2014 \(S.S.I. 2014/12\)](#), regs. 1, **2(3)**

Compositional criteria for follow-on formula

[^{F6}9.—(1) Subject to paragraph (2), follow-on formula shall comply with the compositional criteria set out in Annex II taking into account the specifications set out in Annex V.

(2) In the case of follow-on formula manufactured from those protein hydrolysates specified in point 2.2 of Annex II with a protein content between the minimum and 0.56g/100kj (2.25g/100kcal)

- (a) the suitability of the follow-on formula for satisfying the nutritional requirements of normal healthy infants in conjunction with complementary feeding shall be demonstrated through appropriate studies, performed following generally accepted expert guidance on the design and conduct of such studies; and
- (b) the follow-on formula shall be in accordance with the appropriate specifications set out in Annex VI.]

Textual Amendments

F6 [Reg. 9](#) substituted (28.2.2014) by [The Infant Formula and Follow-on Formula \(Scotland\) Amendment Regulations 2014 \(S.S.I. 2014/12\)](#), regs. 1, **2(4)**

Addition of water (infant formula and follow-on formula)

10. In order to make infant formula or follow on formula ready for use nothing more shall be required than the addition of water.

Prohibitions and limitations on the use of food ingredients (infant formula and follow-on formula)

11. The prohibitions and limitations on the use of food ingredients in infant formula and follow on formula, set out respectively in Annexes I and II, shall be observed.

Listed substances and their purity criteria (infant formula and follow-on formula)

12.—(1) Only the substances listed in Annex III may be used in the manufacture of infant formula and follow on formula in order to satisfy the requirements of Annexes I and II respectively on—

- (a) mineral substances;
- (b) vitamins;
- (c) amino acids and other nitrogen compounds; and
- (d) other substances having a particular nutritional purpose.

(2) Substances used in the manufacture of infant formula and follow on formula pursuant to paragraph (1) must meet the relevant purity criteria.

(3) The relevant purity criteria for the purposes of paragraph (2) are—

- (a) the purity criteria for substances, as provided for in [F7EU] legislation concerning the use of substances listed in Annex III, in the manufacture of foodstuffs for purposes other than those covered by the Directive; and
- (b) in the absence of such purity criteria, generally acceptable purity criteria recommended by international bodies.

Textual Amendments

- F7 Word in reg. 12(3)(a) substituted (22.4.2011) by [The Treaty of Lisbon \(Changes in Terminology\) Order 2011 \(S.I. 2011/1043\)](#), arts. 2, 3-6

Notification of infant formula

13. No food business operator may place an infant formula on the market in Scotland that has not yet been placed on the market in the United Kingdom unless the food business operator has notified the Agency by forwarding to it a model of the label used for the product.

Pesticide residues (infant formula and follow-on formula)

14.—(1) Subject to paragraphs (2) and (3), infant formula and follow on formula shall not contain residues of individual pesticides at levels exceeding 0.01 mg/kg.

(2) Infant formula and follow on formula shall not contain any pesticide residue of a pesticide listed in Table 1 or Table 2 of Annex VIII at a level exceeding 0.003 mg/kg.

(3) Infant formula and follow on formula shall not contain any pesticide residue of a pesticide listed in Annex IX at a level exceeding the maximum residue level specified in that Annex.

(4) The levels referred to in paragraphs (1) to (3) apply to the infant formula or follow on formula—

- (a) manufactured in a form that is ready for consumption; or
- (b) if it is not so manufactured, as reconstituted according to the manufacturers' instructions.

(5) Analytical methods for determining levels of pesticide residues for the purposes of this regulation shall be generally acceptable standardised methods.

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Changes to legislation: There are currently no known outstanding effects for the The Infant Formula and Follow-on Formula (Scotland) Regulations 2007 (revoked). (See end of Document for details)

Naming of infant formula

15. Infant formula may not be sold unless it is sold under the name—

- (a) in the case of a product which is not manufactured entirely from cows' milk proteins [^{F8}or goats' milk proteins], the name “infant formula”; or
- (b) in the case of a product which is manufactured entirely from cows' milk proteins [^{F8}or goats' milk proteins], the name “infant milk”.

Textual Amendments

F8 Words in [reg. 15](#) inserted (28.2.2014) by [The Infant Formula and Follow-on Formula \(Scotland\) Amendment Regulations 2014 \(S.S.I. 2014/12\)](#), regs. 1, **2(5)**

Naming of follow-on formula

16. Follow on formula may not be sold unless it is sold under the name—

- (a) in the case of a product which is not manufactured entirely from cows' milk proteins [^{F9}or goats' milk proteins], the name “follow on formula”; or
- (b) in the case of a product which is manufactured entirely from cows' milk proteins [^{F9}or goats' milk proteins], the name “follow on milk”.

Textual Amendments

F9 Words in [reg. 16](#) inserted (28.2.2014) by [The Infant Formula and Follow-on Formula \(Scotland\) Amendment Regulations 2014 \(S.S.I. 2014/12\)](#), regs. 1, **2(6)**

Labelling of infant formula

17.—(1) Infant formula may not be sold unless the labelling bears—

- (a) a statement to the effect that the product is suitable for particular nutritional use by infants from birth when they are not breast fed;
- (b) the available energy value, expressed in kJ and kcal, and the content of proteins, carbohydrates and lipids, expressed in numerical form, per 100ml of the product ready for use;
- (c) the average quantity of each mineral substance and of each vitamin mentioned in Annex I and, where applicable, of choline, inositol and carnitine, expressed in numerical form, per 100ml of the product ready for use;
- (d) instructions for appropriate preparation, storage and disposal of the product and a warning against the health hazards of inappropriate preparation and storage; and
- (e) the words “Important Notice” or their equivalent immediately followed by—
 - (i) a statement concerning the superiority of breast feeding; and
 - (ii) a statement recommending that the product be used only on the advice of independent persons having qualifications in medicine, nutrition or pharmacy, or other professionals responsible for maternal and child care.

(2) The labelling of infant formula shall—

- (a) be designed to provide the necessary information about the appropriate use of the product so as not to discourage breast feeding; and

- (b) not contain the terms “humanised”, “maternalised”, “adapted” or any similar term.
- (3) The labelling of an infant formula shall not include—
 - (a) any picture of an infant; or
 - (b) any other picture or text which may idealise the use of the product,but may include graphic representations for easy identification of the product or for illustrating methods of preparation.
- (4) The labelling of an infant formula may bear nutrition and health claims only when—
 - (a) the claim is listed in the first column of Annex IV and is expressed in the terms set out there; and
 - (b) the condition specified in the second column of Annex IV in relation to the relevant claim made in the first column is satisfied.
- (5) The labelling of an infant formula may bear the average quantity of nutrients mentioned in Annex III when such information is not covered by paragraph (1)(c) expressed in numerical form, per 100 ml of the product ready for use.

Labelling of follow-on formula

- 18.—**(1) Follow on formula may not be sold unless the labelling bears—
- (a) a statement to the effect that—
 - (i) the product is suitable only for particular nutritional use by infants over the age of 6 months,
 - (ii) it should form only part of a diversified diet,
 - (iii) it is not to be used as a substitute for breast milk during the first 6 months of life, and
 - (iv) the decision to begin complementary feeding, including any decision as to making an exception to the principle of not using follow on formula before 6 months of age should be made only on the advice of independent persons having qualifications in medicine, nutrition or pharmacy, or other professionals responsible for maternal or child care, based on the individual infant's specific growth and development needs;
 - (b) the available energy value, expressed in kJ and kcal, and the content of proteins, carbohydrates and lipids, expressed in numerical form, per 100ml of the product ready for use;
 - (c) the average quantity of each mineral substance and of each vitamin mentioned in Annex II and, where applicable, of choline, inositol and carnitine, expressed in numerical form, per 100ml of the product ready for use;
 - (d) instructions for appropriate preparation, storage and disposal of the product and a warning against the health hazards of inappropriate preparation and storage.
- (2) The labelling of follow on formula shall—
- (a) be designed to provide the necessary information about the appropriate use of the product so as not to discourage breast feeding; and
 - (b) not contain the terms “humanised”, “maternalised”, “adapted” or any similar term.
- (3) The labelling of a follow on formula may bear—
- (a) the average quantity of nutrients mentioned in Annex III when such information is not covered by paragraph (1)(c) expressed in numerical form, per 100 ml of the product ready for use; and

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- (b) in addition to numerical information, information on vitamins and minerals included in Annex VII, expressed as a percentage of the reference values given in that Annex, per 100ml of the product ready for use.

Avoidance of the risk of confusion between infant formula and follow-on formula

19. Infant formula and follow on formula shall be labelled in such a way that it enables consumers to make a clear distinction between such products so as to avoid any risk of confusion between infant formula and follow on formula.

Presentation (infant formula and follow-on formula)

20.—^{F10}(1) The presentation of an infant formula shall comply with the provisions of regulations 17(1)(e), (2), (3) and (4) and 19.

(2) The presentation of a follow on formula shall comply with the provisions of regulations 18(2) and 19.]

(3) For the purposes of this regulation presentation includes the shape, appearance or packaging of the products concerned, the packaging materials used, the way in which they are arranged and the setting in which they are displayed.

Textual Amendments

F10 Reg. 20(1)(2) substituted (4.11.2008) by [The Infant Formula and Follow-on Formula \(Scotland\) Amendment Regulations 2008 \(S.S.I. 2008/322\)](#), regs. 1, **2(3)**

Restrictions on advertising infant formula

21.—(1) No person shall advertise infant formula—

(a) except—

(i) in a scientific publication, or

(ii) for the purposes of trade prior to the retail stage, in a publication of which the intended readership is other than the general public; and

(b) unless the advertisement complies with the provisions of regulation 17(1)(e), (2), (3) and (4), regulation 19 and paragraph (2) and (3).

(2) Advertisements for infant formula shall only contain information of a scientific and factual nature.

(3) Information in advertisements for infant formula shall not imply or create a belief that bottle feeding is equivalent or superior to breast feeding.

Restrictions on advertising follow-on formula

22. No person shall advertise follow on formula where the advertisement contravenes or fails to comply with the provisions set out in regulations 18(2) and 19, in so far as they are relevant to follow on formula.

Restrictions on promotion of infant formula

23.—(1) No person shall at any place where any infant formula is sold by retail—

(a) advertise any infant formula;

- (b) make any special display of an infant formula designed to promote sales;
 - (c) give away—
 - (i) any infant formula as a free sample, or
 - (ii) any coupon which may be used to purchase an infant formula at a discount;
 - (d) promote the sale of an infant formula by means of premiums, special sales, loss-leaders or tie-in sales; or
 - (e) undertake any other promotional activity to induce the sale of an infant formula.
- (2) No manufacturer or distributor of any infant formula shall provide for promotional purposes any infant formula free or at a reduced or discounted price, samples or any gift designed to promote the sale of an infant formula, to—
- (a) the general public;
 - (b) pregnant women;
 - (c) mothers; or
 - (d) members of the families of persons mentioned in sub paragraphs (b) and (c),
- either directly, or indirectly through the health care system or health workers.

Provision of informational and educational material dealing with the feeding of infants

24.—(1) No person shall produce or publish any informational or educational material, whether written or audiovisual, dealing with the feeding of infants and intended to reach pregnant women and mothers of infants and young children, unless that material includes clear information on all the following points—

- (a) the benefits and superiority of breast feeding;
 - (b) maternal nutrition;
 - (c) the preparation for and the maintenance of breast feeding;
 - (d) the possible negative effect on breast feeding of introducing partial bottle feeding;
 - (e) the difficulty of reversing the decision not to breast feed; and
 - (f) where needed, the proper use of an infant formula.
- (2) When the material referred to in paragraph (1) contains information about the use of an infant formula it shall include information about—
- (a) the social and financial implications of its use;
 - (b) the health hazards of inappropriate foods or feeding methods; and
 - (c) the health hazards of improper use of infant formula.
- (3) When the material referred to in paragraph (1) contains information about the use of an infant formula it shall not use any pictures which may idealise the use of infant formula.
- (4) No manufacturer or distributor of an infant formula shall make a donation of any informational or educational equipment or materials except in accordance with the following conditions—
- (a) the donation shall be made following a request by the intended recipient;
 - (b) the donation shall be made with the written authority of the Scottish Ministers or in accordance with guidelines drawn up by the Scottish Ministers;
 - (c) the equipment and materials shall not be marked or labelled with the name of a proprietary brand of infant formula; and
 - (d) the equipment or materials shall be distributed only through the health care system.

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Changes to legislation: There are currently no known outstanding effects for the The Infant Formula and Follow-on Formula (Scotland) Regulations 2007 (revoked). (See end of Document for details)

Free or reduced rate infant formula

25. An institution or organisation which receives any infant formula free or at a reduced rate shall—

- (a) if that infant formula is for use in the institution or organisation, only use it for infants who have to be fed on infant formula and only for as long as required by those infants; or
- (b) if that infant formula is for distribution outside the institution or organisation, only distribute it for infants who have to be fed on infant formula and only for as long as required by those infants.

Export of infant formula to third countries

^{F11}26.

Textual Amendments

F11 Regs. 26, 27 revoked (20.7.2016) by [The Foods for Specific Groups \(Scotland\) Regulations 2016 \(S.S.I. 2016/190\)](#), regs. 1(1), **7(1)**

Export of follow-on formula to third countries

^{F11}27.

Textual Amendments

F11 Regs. 26, 27 revoked (20.7.2016) by [The Foods for Specific Groups \(Scotland\) Regulations 2016 \(S.S.I. 2016/190\)](#), regs. 1(1), **7(1)**

Offences and enforcement

28.—(1) Any person who contravenes or fails to comply with any of the provisions contained in regulations 3, 4, 13, 21(1), 22, 23, 24, 25, 26(1) and (2) and 27 is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Each food authority shall enforce and execute these Regulations in its area.

Application of various sections of the Food Safety Act 1990

29. The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof shall be construed as a reference to these Regulations—

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21 (defence of due diligence), as it applies for the purpose of section 14 or 15;
- (d) section 30(8) (which relates to documentary evidence);
- (e) section 33 (obstruction etc. of officers);
- (f) section 35(1) to (3) (punishment of offences), in so far as it relates to offences under section 33(1) and (2) as applied by paragraph (e);
- (g) section 36 (offences by bodies corporate);

- (h) section 36A (offences by Scottish partnerships); and
- (i) section 44 (protection of officers acting in good faith).

Amendment of the Foods for Special Medical Purposes (Scotland) Regulations 2000

30.—(1) The Foods for Special Medical Purposes (Scotland) Regulations 2000^{M6} are amended in accordance with paragraph (2).

(2) In regulation 2 (interpretation), for the definition “the Directive” there is substituted the following definition—

““the Directive” means Commission Directive [1999/21/EC](#) on dietary foods for special medical purposes^{M7} as amended by—

- (a) the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and Slovak Republic and the adjustments to the Treaties on which the European Union is founded^{M8};
- (b) Commission Directive [2006/82/EC](#) adapting Directive 91/321 on infant formulae and follow on formulae and Directive [1999/21/EC](#) on dietary foods for special medical purposes, by reason of the accession of Bulgaria and Romania^{M9}; and
- (c) Commission Directive [2006/141/EC](#) on infant formulae and follow on formulae and amending Directive [1991/21/EC](#)”^{M10}.

Marginal Citations

M6 [S.S.I. 2000/130](#); as amended by [S.S.I. 2004/395](#), [2005/616](#) and [2007/424](#).

M7 O.J. No. L 91, 7.4.99, p.29.

M8 O.J. No. L 236, 23.9.2003, p.33.

M9 O.J. No. L 362, 20.12.2006, p.94.

M10 O.J. No. L 401, 30.12.2006, p.1.

Revocation and transitional arrangements

31.—(1) Regulations 4, 5, 6, 7, 13, 14, 14A, 15, 16, 17, 18, 19, 20 and 21 of the 1995 Regulations are revoked in so far as they extend to Scotland.

(2) The instruments specified in column 1 of the Schedule to these Regulations are revoked to the extent specified in column 3 of that Schedule.

[^{F12}(3) In respect of any contravention or failure to comply before 1st January 2010, no person commits an offence under regulation 28(1) consisting of a contravention of or a failure to comply with—

- (a) regulation 3(1), where—
 - (i) the action that would otherwise constitute the offence consists of marketing infant formula which contravenes or fails to comply with regulation 5, 6, 8, 10, 11, 12 or 14(1), (2) or (3), and
 - (ii) that action does not constitute an offence under regulation 22(1) of the 1995 Regulations consisting of a contravention of or a failure to comply with regulation 2(a)(i) or (ii) of those Regulations;
- (b) regulation 3(1), where—

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- (i) the action that would otherwise constitute the offence consists of marketing infant formula which contravenes or fails to comply with regulation 17 or 19, and
 - (ii) that action, had it taken place on 10th January 2008, would not have constituted an offence under regulation 22(1) of the 1995 Regulations as they then stood consisting of a contravention of or a failure to comply with regulation 2(a)(iii) of those Regulations;
- (c) regulation 3(1), where–
- (i) the action that would otherwise constitute the offence consists of marketing infant formula which contravenes or fails to comply with regulation 20(1) in so far as regulation 20(1) applies in relation to the shape, appearance and packaging of that infant formula concerned, and
 - (ii) that action, had it taken place on 10th January 2008, would not have constituted an offence under regulation 22(1) of the 1995 Regulations as they then stood consisting of a contravention of or a failure to comply with regulation 2(a)(iv) of those Regulations in so far as regulation 2(a)(iv) applied in relation to the shape, appearance and packaging of the product concerned;
- (d) regulation 3(2), where–
- (i) the action that would otherwise constitute the offence consists of marketing follow on formula which contravenes or fails to comply with regulation 5, 7, 9, 10, 11, 12 or 14(1), (2) or (3), and
 - (ii) that action does not constitute an offence under regulation 22(1) of the 1995 Regulations consisting of a contravention of or a failure to comply with regulation 3(a) or (b) of those Regulations;
- (e) regulation 3(2), where–
- (i) the action that would otherwise constitute the offence consists of marketing follow on formula which contravenes or fails to comply with regulation 18 or 19, and
 - (ii) that action, had it taken place on 10th January 2008, would not have constituted an offence under regulation 22(1) of the 1995 Regulations as they then stood consisting of a contravention of or a failure to comply with regulation (3)(c) of those Regulations;
- (f) regulation 3(2), where–
- (i) the action that would otherwise constitute the offence consists of marketing follow-on formula which contravenes or fails to comply with regulation 20(2) in so far as regulation 20(2) applies in relation to the shape, appearance and packaging of that follow on formula; and
 - (ii) that action, had it taken place on 10th January 2008, would not have constituted an offence under regulation 22(1) of the 1995 Regulations as they then stood consisting of a contravention of or a failure to comply with regulation 3(d) of those Regulations in so far as regulation 3(d) applied in relation to the shape, appearance and packaging of the product concerned;
- (g) regulation 4, where the action that would otherwise constitute the offence does not constitute an offence under regulation 22(1) of the 1995 Regulations consisting of a contravention of or a failure to comply with regulation 2(b)(i) or (ii) of those Regulations;
- (h) regulation 4, where the action that would otherwise constitute the offence, had it taken place on 10th January 2008, would not have constituted an offence under regulation 22(1) of the 1995 Regulations as they then stood consisting of a contravention of or a failure to comply with regulation 2(b)(iii) of those Regulations; or

- (i) regulation 4, where the action that would otherwise constitute the offence, had it taken place on 10th January 2008, would not have constituted an offence under regulation 22(1) of the 1995 Regulations as they then stood consisting of a contravention of or a failure to comply with regulation 2(b)(iv) of those Regulations in so far as regulation 2(b)(iv) applied in relation to the shape, appearance and packaging of the product concerned.]
- (4) The 1995 Regulations are amended in so far as they extend to Scotland in accordance with paragraph (5).
- (5) The following paragraph is added at the end of regulation 22 (offences and enforcement) of the 1995 Regulations—
- “(4) No person commits an offence under paragraph (1) consisting of a contravention of or a failure to comply with—
- (a) regulation 2(a)(i) or (ii), where there is no offence under regulation 3(1) of the 2007 Regulations consisting of a contravention of or a failure to comply with regulation 5, 6, 8, 10, 11, 12 or 14(1), (2) or (3) of those Regulations;
- (b) regulation 2(b)(i) or (ii), where there is no offence under regulation 4 of the 2007 Regulations; or
- (c) regulation 3(a) or (b), where there is no offence under regulation 3(2) of the 2007 Regulations consisting of a contravention of or a failure to comply with regulation 5, 7, 9, 10, 11, 12 or 14(1), (2) or (3) of those Regulations.
- (5) In this regulation “the 2007 Regulations” means the Infant Formula and Follow on Formula (Scotland) Regulations 2007.”.
- (6) In this regulation “the 1995 Regulations” means the Infant Formula and Follow on Formula Regulations 1995^{M11}.

Textual Amendments

F12 Reg. 31(3) substituted (4.11.2008) by [The Infant Formula and Follow-on Formula \(Scotland\) Amendment Regulations 2008 \(S.S.I. 2008/322\)](#), regs. 1, **2(6)**

Marginal Citations

M11 [S.I. 1995/77](#), amended by [S.I. 1997/451](#) and by [S.S.I. 2000/217](#), 2004/7, 2005/616 and 2007/424.

St Andrew's House,
Edinburgh

SHONA ROBISON
Authorised to sign by the Scottish Ministers

Status: Point in time view as at 20/07/2016.

Changes to legislation: There are currently no known outstanding effects for the The Infant Formula and Follow-on Formula (Scotland) Regulations 2007 (revoked). (See end of Document for details)

SCHEDULE

Regulation 31(2)

Revocations

Column 1 Instruments	Column 2 Reference	Column 3 Extent of revocation
The Infant Formula and Follow-on Formula Regulations 1995	S.I. 1995/77	The whole Regulations insofar as they extend to Scotland
The Infant Formula and Follow-on Formula (Amendment) Regulations [F13 1997]	S.I. [F14 1997] /451	The whole Regulations insofar as they extend to Scotland
The Infant Formula and Follow-on Formula Amendment (Scotland) Regulations 2000	S.S.I. 2000/217	The whole Regulations
The Infant Formula and Follow-on Formula Amendment (Scotland) Regulations 2004	S.S.I. 2004/7	The whole Regulations
The Food for Particular Nutritional Uses (Scotland) (Miscellaneous Amendments) Regulations 2007	S.S.I. 2007/424	Regulation 2

Textual Amendments

- F13** Word in *sch.* substituted (4.11.2008) by [The Infant Formula and Follow-on Formula \(Scotland\) Amendment Regulations 2008 \(S.S.I. 2008/322\)](#), regs. 1, **2(7)**
- F14** Word in *sch.* substituted (4.11.2008) by [The Infant Formula and Follow-on Formula \(Scotland\) Amendment Regulations 2008 \(S.S.I. 2008/322\)](#), regs. 1, **2(7)**

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, give effect to Commission Directive [2006/141/EC](#) on infant formulae and follow-on formulae and amending Directive [1999/21/EC](#) (O.J. No. L 401, 30.12.06, p.1) and Council Directive [92/52/EEC](#) on infant formulae and follow-on formulae intended for export to third countries (O.J. No. L 179, 1.7.92, p.129).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 (1972 c. 68) and references to an Annex to Directive [2006/141/EC](#) are to be construed as references to that Annex as amended from time to time (regulation 2(5)).

These Regulations—

- (a) prohibit marketing of infant formula and follow-on formula which contravenes or fails to comply with specified regulations (regulation 3);
- (b) prohibit marketing or otherwise representing a product as suitable for satisfying by itself the nutritional requirements of normal healthy infants during the first months of life until the introduction of appropriate complementary feeding unless that product is infant formula (regulation 4);
- (c) provide that infant formula and follow-on formula may not contain any substance in such quantity as to endanger the health of infants and young children (regulation 5);
- (d) provide that infant formula must be manufactured from specified protein sources and other suitable food ingredients (regulation 6);
- (e) provide that follow-on formula must be manufactured from specified protein sources and other suitable food ingredients (regulation 7);
- (f) provide that infant formula must comply with specified compositional criteria (regulation 8);
- (g) provide that follow-on formula must comply with specified compositional criteria (regulation 9);
- (h) provide that in order to make infant formula or follow-on formula ready for use nothing more shall be required than the addition of water (regulation 10);
- (i) provide that the use of food ingredients in infant formula and follow-on formula must observe specified prohibitions and limitations (regulation 11);
- (j) provide that only specified substances may be used in the manufacture of infant formula and follow-on formula in order to satisfy specified requirements of Directive [2006/141/EC](#) and that those substances must meet specified purity criteria (regulation 12);
- (k) prohibit a food business operator placing an infant formula on the market that has not yet been placed on the market in the United Kingdom unless that food business operator has give prior notice to the Food Standards Agency (regulation 13);
- (l) provide that infant formula and follow-on formula may not contain pesticide residues above specified levels (regulation 14);
- (m) provide that infant formula may only be sold under certain names (regulation 15);
- (n) provide that follow-on formula may only be sold under certain names (regulation 16);
- (o) provide for the labelling of infant formula (regulation 17);
- (p) provide for the labelling of follow-on formula (regulation 18);
 - (a)
- (q) provide that infant formula and follow-on formula must be labelled to make a clear distinction between such products so as to avoid any risk of confusion between them (regulation 19);
- (r) apply the provisions of specified regulations to the presentation of infant formula and follow-on formula (regulation 20);
- (s) prohibit advertising of infant formula except in specified publications and unless the advertisement complies with the provisions of specified regulations (regulation 21(1));
- (t) impose restrictions on the content of advertisements for infant formula (regulation 21(2) and (3));
- (u) prohibit advertising of follow-on formula where the advertisement contravenes or fails to comply with the provisions of specified regulations (regulation 22);
- (v) impose restrictions on the promotion of infant formula (regulation 23);

Status: Point in time view as at 20/07/2016.

Changes to legislation: There are currently no known outstanding effects for the The Infant Formula and Follow-on Formula (Scotland) Regulations 2007 (revoked). (See end of Document for details)

- (w) impose restrictions on the production or publication of informational or educational material dealing with the feeding of infants and intended to reach specified persons, including pregnant women and mothers of infants and young children (regulation 24(1), (2) and (3));
- (x) prohibit donation of informational or educational equipment or materials by manufacturers or distributors of infant formula unless certain conditions are met (regulation 24(4));
- (y) impose restrictions on what an institution or organisation may do with infant formula that it has received free or at a reduced rate (regulation 25);
- (z) prohibit export to a third country of infant formula which contravenes or fails to comply with specified regulations, a specified international standard or the Food (Lot Marking) Regulations 1996 (S.I. 1996/1502) (regulation 26(1));
- (aa) prohibit export to a third country of a product represented as suitable for satisfying by itself the nutritional requirements of normal healthy infants during the first four to six months of life unless that product is infant formula (regulation 26(2));
- (bb) prohibit export to a third country of follow-on formula which contravenes or fails to comply with specified regulations, a specified international standard or the Food (Lot Marking) Regulations 1996 (regulation 27);
- (cc) provide that a person who contravenes or fails to comply with specified regulations is guilty of an offence and provide a penalty for contravening or failing to comply with those regulations (regulation 28(1));
- (dd) provide that each food authority must enforce and execute these Regulations within its area (regulation 28(2));
- (ee) apply specified provisions of the Food Safety Act 1990 (1990 c. 16) with modifications (regulation 29);
- (ff) amend the Foods for Special Medical Purposes (Scotland) Regulations 2000 (S.S.I. 2000/130) (regulation 30); and
- (gg) revoke the Infant Formula and Follow-on Formula Regulations 1995 (S.I. 1995/77) and instruments amending those Regulations in so far as they extend to Scotland (S.I. 1995/77 extends to the whole of Great Britain) and provide transitional arrangements with regard to S.I. 1995/77 (regulation 31 and Schedule).

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector 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.

Status:

Point in time view as at 20/07/2016.

Changes to legislation:

There are currently no known outstanding effects for the The Infant Formula and Follow-on Formula (Scotland) Regulations 2007 (revoked).