

2012 No. 119

FOOD

The Food Additives (Scotland) Amendment Regulations 2012

Made - - - - *19th April 2012*

Laid before the Scottish Parliament *23rd April 2012*

Coming into force - - *23rd May 2012*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(a) and (f), 17(1) and (2) and 48(1) of the Food Safety Act 1990(a), paragraph 1A of Schedule 2 to the European Communities Act 1972(b) 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 any reference to an Annex to an EU instrument specified in the list of EU instruments substituted by regulation 2(3), to be construed as a reference to that Annex 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(c).

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(d).

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- (a) 1990 c.16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (c.28). 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 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).
- (b) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46), section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The functions conferred on the Minister of the Crown under section 2(2), 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 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. Paragraph 1A of Schedule 2 was inserted by section 28 of the 2006 Act.
- (c) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the Food Standards Act 1999 (c.28).
- (d) OJ L 31, 1.2.2002, p.1, last amended by Commission 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/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (OJ L 188, 18.7.2009, p14).

Citation and commencement

1. These Regulations may be cited as the Food Additives (Scotland) Amendment Regulations 2012 and come into force on 23rd May 2012.

Amendment of the Food Additives (Scotland) Regulations 2009

2.—(1) The Food Additives (Scotland) Regulations 2009(a) are amended in accordance with paragraphs (2) to (6).

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

(a) for the definition of “permitted colour” substitute—

““permitted colour” means—

(a) before 1st December 2012, any colour listed in Annex I to Directive 94/36 which satisfies the specific purity criteria for that colour set out in Annex I to Commission Directive 2008/128/EC laying down specific purity criteria concerning colours for use in foodstuffs, as amended by Commission Directive 2011/3/EU amending Directive 2008/128/EC laying down specific purity criteria on colours for use in foodstuffs;

(b) on or after 1st December 2012, any colour listed in Annex I to Directive 94/36 which satisfies the specific purity criteria for that colour set out in the Annex to Regulation 231/2012;”;

(b) for the definition of “permitted sweetener” substitute—

““permitted sweetener” means—

(a) before 1st December 2012—

(i) any sweetener specified in the second column of the Annex to Directive 94/35 which satisfies the specific purity criteria for that sweetener set out in Annex I to Commission Directive 2008/60/EC laying down specific purity criteria concerning sweeteners for use in foodstuffs, as amended by Commission Directive 2010/37/EU amending Directive 2008/60/EC laying down specific purity criteria on sweeteners; or

(ii) in the case of E960 steviol glycosides, a sweetener which satisfies the specific purity criteria for that sweetener set out in the Annex to Regulation 231/2012;

(b) on or after 1st December 2012—

(i) any sweetener specified in the second column of the Annex to Directive 94/35; or

(ii) in the case of E960 steviol glycosides, a sweetener, which satisfies the specific purity criteria for that sweetener set out in the Annex to Regulation 231/2012;”;

(c) for the definition of “purity criteria”, in relation to a miscellaneous additive, substitute—

““purity criteria”, in relation to a miscellaneous additive, means—

(a) before 1st December 2012—

(i) the specific purity criteria set out in relation to that additive in Annex I to Commission Directive 2008/84/EC laying down specific purity criteria on food additives other than colours and sweeteners, as amended by Commission Directive 2010/67/EU amending Directive 2008/84/EC laying down specific purity criteria on food additives other than colours and sweeteners; or

(ii) in the case of E1205 basic methacrylate copolymer, the specific purity criteria set out in the Annex to Regulation 231/2012;

(a) S.S.I. 2009/436, as amended by S.S.I. 2011/99 and 305.

- (b) on or after 1st December 2012, the specific purity criteria set out in relation to that additive in the Annex to Regulation 231/2012;”;
- (d) at the end of the definition of “Regulation 1333/2008” insert “as read with Regulation 231/2012”; and
- (e) after the definition of “Regulation 1333/2008” insert the following definitions:—
- ““Regulation 1129/2011” means Commission Regulation (EU) No 1129/2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council by establishing a Union list of food additives^(a), as read with Commission Regulation (EU) No 1131/2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council with regard to steviol glycosides^(b);
- “Regulation 1130/2011” means Commission Regulation (EU) No 1130/2011 amending Annex III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives by establishing a Union list of food additives approved for use in food additives, food enzymes, food flavourings and nutrients^(c);
- “Regulation 231/2012” means Commission Regulation (EU) No 231/2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council^(d)”;
- (3) For paragraph (5) of regulation 2, substitute—
- “(5) The EU instruments are Directive 94/35, Directive 95/2, Regulation 1333/2008 and Regulation 231/2012.”.
- (4) In paragraph (2) of regulation 14 (offences and penalties)—
- (a) after “Article 34 of Regulation 1333/2008,” insert “Article 2 of Regulation 1129/2011 and Article 2 of Regulation 1130/2011,”; and
- (b) omit sub-paragraphs (b) and (c).
- (5) For paragraph (1) of regulation 18 (consequential amendments), substitute—
- “(1) In paragraph (1) of regulation 4 (exemptions from the prohibition of mineral hydrocarbon in food) of the Mineral Hydrocarbons in Food (Scotland) Regulations 1966^(e), for sub-paragraph (d) substitute—
- “(d) any food containing mineral hydrocarbon that is used in the food as a miscellaneous additive as defined in the Food Additives (Scotland) Regulations 2009 in compliance with the provisions of those Regulations;”.

(a) OJ L 295, 12.11.2011, p1.
 (b) OJ L 295, 12.11.2011, p205.
 (c) OJ L 295, 12.11.2011, p178.
 (d) OJ L 83, 22.3.2012, p1.
 (e) S.I. 1966/1263.

(6) In the table in the Schedule (specified Regulation 1333/2008 provisions), after the entries relating to Article 4.1, insert—

“Article 4.2 (as read with Articles 12, 13.2 and 18.3)	Requirement that only food additives included in the list in Annex III to Regulation 1333/2008 may be used in food additives, food enzymes, food flavourings and nutrients and under the conditions of use specified in that Annex.”
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St Andrew’s House,
Edinburgh
19th April 2012

MICHAEL MATHESON
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make certain amendments to the Food Additives (Scotland) Regulations 2009 (S.S.I. 2009/436) (“the 2009 Regulations”) in order to provide for the execution and enforcement in Scotland of the following Commission Regulations:—

- (a) Commission Regulation (EU) No 1129/2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council by establishing a Union list of food additives (OJ L 295, 12.11.2011, p1);
- (b) Commission Regulation (EU) No 1130/2011 amending Annex III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives by establishing a Union list of food additives approved for use in food additives, food enzymes, food flavourings and nutrients (OJ L 295, 12.11.2011, p178);
- (c) Commission Regulation (EU) No 1131/2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council with regard to steviol glycosides (OJ L 295, 12.11.2011, p205); and
- (d) Commission Regulation (EU) No 231/2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council (OJ L 83, 22.3.2012, p1).

These Regulations amend the 2009 Regulations so as to—

- (a) update the definitions of “permitted colour”, “permitted sweetener”, “purity criteria” and “Regulation 1333/2008” (regulation 2(2)(a) to (d));
- (b) insert definitions of Commission Regulations 1129/2011, 1130/2011 and 231/2012 (regulation 2(2)(e));
- (c) include Commission Regulation 231/2012 in the list of EU instruments to which ambulatory reference is made (regulation 2(3));
- (d) in regulation 14 (offences and penalties), insert reference to the transitional arrangements contained in Article 2 of Commission Regulations 1129/2011 and 1130/2011 (regulation 2(4)(a));
- (e) omit references in regulation 14 to Article 4.2 of Commission Regulation 1333/2008 (OJ L 354, 31.12.2008, p16) (regulation 2(4)(b)); and
- (f) insert reference to Article 4.2 in the Schedule of specified Regulation 1333/2008 provisions (regulation 2(6)).

These Regulations also correct an error in the 2009 Regulations. They amend the Mineral Hydrocarbons in Food (Scotland) Regulations 1966; and delete the provision in the 2009 Regulations which purported to amend the Mineral Hydrocarbons in Food Regulations 1966 (S.I. 1966/1073), which does not in fact have any application in Scotland (regulation 2(5)).

A Business and Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on the costs of business.

SCOTTISH STATUTORY INSTRUMENTS

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