

2021 No. 70

FOOD

The Food Information (Scotland) Amendment Regulations 2021

Made - - - - *9th February 2021*

Laid before the Scottish Parliament *11th February 2021*

Coming into force - - *1st October 2021*

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

The Scottish Ministers have had regard to relevant advice given by Food Standards Scotland in accordance with section 48(4A) of the Food Safety Act 1990(b).

There has been consultation as required by Article 9 of Regulation (EC) 178/2002(c) 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, during the preparation and evaluation of the following Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Food Information (Scotland) Amendment Regulations 2021.

(2) These Regulations come into force on 1 October 2021.

(3) In these Regulations, “the 2014 Regulations” means the Food Information (Scotland) Regulations 2014(d).

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- (a) 1990 c.16 (“the 1990 Act”). Section 16(1) and section 48(1) were amended by paragraph 8 of schedule 5 of the Food Standards Act 1999 (c.28) (“the 1999 Act”). Amendments made by schedule 5 of the 1999 Act which extend to Scotland are to be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State, so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. In so far as not transferred, those 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). Article 39 of Regulation (EU) 1169/2011 (“EUR 2011/1169”) was amended by regulation 5(20) of the Food (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/529) (“the 2019 Regulations”) to provide that in addition to the mandatory particulars referred to in Article 9(1) and Article 10, nothing in EUR 2011/1169 prevents the appropriate authority from making “Type A” regulations requiring additional mandatory particulars for specific types or categories of food, justified on grounds of specified grounds including the protection of consumers. “Type A regulations” are defined in Article 2(2)(y)(iii) of EUR 2011/1169 (as amended by schedule 2 Part 1 of the 2019 Regulations). Type A regulations are defined in relation to Scotland as any regulations made by the Scottish Ministers under the 1990 Act using a power that enables them to make regulations relating to the matter specified in the provision in question.
- (b) Section 48(4A) was inserted by paragraph 21 of schedule 5 of the 1999 Act.
- (c) EUR 2002/178.
- (d) S.S.I. 2014/312, as relevantly amended by the Food Information (Miscellaneous Amendments) (Scotland) Regulations 2015 (S.S.I. 2015/410) and the Food Information (Scotland) Amendment Regulations 2016 (S.S.I. 2016/191).

Amendment of the 2014 Regulations

2.—(1) The 2014 Regulations are amended in accordance with this regulation.

(2) In regulation 2 (interpretation)(a)—

(a) in paragraph (1), after the definition of “Regulation 2018/775”, insert—

““relevant food” means for the purposes of regulations 5 and 5A(1)(b), a food in which an ingredient or processing aid listed in Annex II, or derived from a substance or product listed in Annex II, has been used in its manufacture or preparation and that is still present in the finished product (even if in an altered form);”.

(b) in paragraph (4)—

(i) in sub-paragraph (ca),—

(aa) after “(3)” for “, (5) and (6)” substitute “and (5)”,

(bb) for “that are not prepacked etc” substitute “other than prepacked or prepacked for direct sale”,

(ii) in sub-paragraph (d), for “that are not prepacked etc.” substitute “other than prepacked or prepacked for direct sale”.

(3) In regulation 5 (foods that are not prepacked containing an allergenic substance or product etc.)(b)—

(a) in the heading, for “that are not prepacked etc.” substitute “other than prepacked or prepacked for direct sale”,

(b) in paragraph (2)—

(i) for “and that is”, substitute “and that”,

(ii) in sub-paragraph (a)—

(aa) before “not” insert “is”,

(bb) at the end, insert “or”,

(iii) in sub-paragraph (b)—

(aa) before “packed” insert “is”,

(bb) for “; or” substitute “.”,

(iv) omit sub-paragraph (c),

(c) omit paragraph (6).

(4) After regulation 5, insert—

“Foods that are prepacked for direct sale – duty to list ingredients

5A.—(1) A food business operator who offers for sale a food to which this regulation applies must provide directly on the packaging or on a label attached to the packaging the particulars required by—

(a) Article 9(1)(b) (list of ingredients), as read with—

(i) Article 13(1) to (3) (presentation of mandatory particulars), as read with any regulations made in accordance with Article 13(4),

(ii) Article 15 (language requirements),

(iii) Article 16(2) (omission of certain mandatory particulars), so far as it relates to the particulars required by Article 9(1)(b),

(a) Paragraph 1 of regulation 2 was relevantly amended by regulation 3(2)(a)(ii) of the Food Information (Miscellaneous Amendments) (Scotland) Regulations 2015 (S.S.I. 2015/410) (“the 2015 regulations”). Paragraph 3 of regulation 2 was relevantly amended by regulation 3(2)(b) of the 2015 regulations. Paragraph 4 of regulation 2 was relevantly amended by regulation 3(2)(c) of the 2015 regulations and by regulation 2(2)(e) of the Food Information (Scotland) Amendment Regulations 2016 (S.S.I. 2016/191).

(b) Regulation 5(5)(a) was relevantly amended by regulation 3(3) of the 2015 regulations.

- (iv) Article 17 (name of the food), as read with Parts A and C of Annex VI (mandatory particulars accompanying the name of the food) and, in the case of an ingredient using a minced meat designation as a name, the following points of Part B of Annex VI—
 - (aa) point 1, and
 - (bb) point 3, as read with regulation 4 (derogation relating to minced meat) and schedule 1 (mark to be used on minced meat to which the derogation in regulation 4 applies),
- (v) Article 18 (list of ingredients), as read with Annex VII (indication and designation of ingredients) and paragraph (1)(a)(iv) of this regulation,
- (vi) Article 19(1) (omission of the list of ingredients), as read with any regulations made in accordance with Article 19(2), and
- (vii) Article 20 (omission of constituents of food from the list of ingredients),
- (b) where a food is a relevant food, Article 9(1)(c) (certain substances or products causing allergies or intolerances), as read with Article 21(1) (labelling of certain substances or products causing allergies or intolerances) and Annex II (substances or products causing allergies or intolerances).
- (2) This regulation applies to a food that—
 - (a) is offered for sale to a final consumer or to a mass caterer otherwise than by means of distance communication, and
 - (b) is prepacked for direct sale.”.
- (5) In regulation 6 (foods that are not prepacked etc. – general requirement to name them)—
 - (a) in the heading, for “that are not prepacked etc.” substitute “other than prepacked or prepacked for direct sale”,
 - (b) in paragraph (2)—
 - (i) for “and is” substitute “and”,
 - (ii) in sub-paragraph (a)—
 - (aa) before “not” insert “is”,
 - (bb) at the end, insert “or”,
 - (iii) in sub-paragraph (b)—
 - (aa) before “packed” insert “is”,
 - (bb) for “; or” substitute “.”,
 - (iv) omit sub-paragraph (c).
- (6) After regulation 6, insert—

“Foods that are prepacked for direct sale – general requirement to name them

6A.—(1) A food business operator who offers for sale a food to which this regulation applies must provide the particulars required by Article 9(1)(a) (the name of the food), as read with—

- (a) Article 17(1) and (4),
- (b) Part A of Annex VI, and
- (c) in the case of a food offered for sale using a minced meat designation as a name—
 - (i) Article 17(5),
 - (ii) point 1 of Part B of Annex VI, and
 - (iii) point 3 of Part B of Annex VI, as read with regulation 4 and schedule 1.

(2) This regulation applies to a food that—

- (a) is offered for sale to a final consumer or to a mass caterer, and

(b) is prepacked for direct sale.

(3) The particulars mentioned in paragraph (1) must be provided directly on the packaging or on a label attached to the packaging, except in the case of an offer for sale made by means of distance communication.

(4) In this regulation “offered for sale” has the same meaning as in Article 44 and “offer for sale” must be construed accordingly.”.

(7) In regulation 10 (offences)—

(a) after paragraph (b) insert “(ba) regulation 5A(1);”,

(b) after paragraph (c) insert “(ca) regulation 6A(1) and (3);”.

(8) In paragraph 3 of Part 2 of schedule 1 (mark to be used on minced meat to which the derogation in regulation 4 applies), after “prepacked food” insert “and prepacked for direct sale food”.

St Andrew’s House,
Edinburgh
9th February 2021

CLARE HAUGHEY
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Food Information (Scotland) Regulations 2014 (“the 2014 Regulations”).

The Scottish Ministers make these Regulations under the Food Safety Act 1990 to introduce two new duties in respect of pre-packed for direct sale food.

New regulation 5A, inserted by regulation 2(4) of this instrument, amends the 2014 Regulations to require food business operators to ensure that food that is prepacked for direct sale (whether supplied to a final consumer or to a mass caterer) has a list of ingredients (including details of allergenic substances or products) provided directly on the package or on a label attached to the package. This requirement does not apply where an offer for sale is made by means of distance communication.

New regulation 6A, inserted by regulation 2(6) of this instrument, amends the 2014 Regulations to require food business operators to ensure that food that is prepacked for direct sale (whether supplied to a final consumer or to a mass caterer) has the name of the food provided directly on the package or on a label attached to the package, except in the case of an offer for sale made by distance communication.

Other provisions make amendments in consequence of these changes. Regulation 2(7) extends the offence provision in regulation 10 of the 2014 Regulations by making it an offence to contravene a requirement in new regulations 5A or 6A.

A full Business and Regulatory Impact Assessment of the effect that this instrument will have on the costs of business, the consumer sector and the public sector has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from Food Standards Scotland, Pilgrim House, Old Ford Road, Aberdeen, AB11 5RL.

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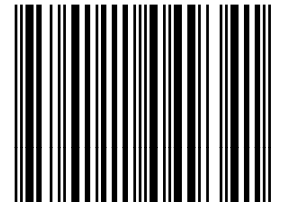
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