
STATUTORY INSTRUMENTS

1989 No. 945

The Emulsifiers and Stabilisers in Food (Scotland) Regulations 1989

Title and commencement

1. These Regulations may be cited as the Emulsifiers and Stabilisers in Food (Scotland) Regulations 1989 and shall come into force on 12th July 1989.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—

“the Act” means the Food and Drugs (Scotland) Act 1956;

“appropriate designation” means, as respects any permitted emulsifier or permitted stabiliser, a name or description or a name and description sufficiently specific, in each case, to indicate to an intending purchaser the true nature of the permitted emulsifier or permitted stabiliser to which it is applied;

“bread” has the meaning assigned to it by the Bread and Flour (Scotland) Regulations 1984(1);

“cheese spread”, “processed cheese”, “soft cheese” and “whey cheese” have the meanings respectively assigned to them by the Cheese (Scotland) Regulations 1970(2);

“chocolate product” and “cocoa product” have the meanings respectively assigned to them by the Cocoa and Chocolate Products (Scotland) Regulations 1976(3);

“emulsifier” and “stabiliser” mean respectively any substance which is capable—

- (a) in the case of an emulsifier, of aiding the formation of, and
- (b) in the case of a stabiliser, of maintaining,

the uniform dispersion of two or more immiscible substances, but do not in either case include—

- (i) any natural food substance,
- (ii) any permitted antioxidant,
- (iii) any permitted colouring matter,
- (iv) any permitted miscellaneous additive,
- (v) any permitted preservative,
- (vi) any permitted solvent,
- (vii) any permitted sweetener,
- (viii) caseins and caseinates,
- (ix) proteins, protein concentrates and protein hydrolysates,

(1) S.I. 1984/1518, to which there is an amendment not relevant to these Regulations.
(2) S.I. 1970/108; relevant amending instruments are S.I. 1974/1337, 1984/847
(3) S.I. 1976/914; relevant amending instrument is S.I. 1982/108

- (x) starches, whether modified or not,
- (xi) normal straight chain fatty acids derived from food fats;
- “flour” has the meaning assigned to it by the Bread and Flour (Scotland) Regulations 1984;
- “food” has the same meaning as in the Act, except that it is limited to food intended for sale for human consumption;
- “Food Chemicals Codex 1981” means the third edition of the Food Chemicals Codex, published in 1981 by the National Academy of Sciences, Washington DC, United States of America;
- “natural food substance” means any substance, suitable for use as food and commonly used as food, which is wholly a natural product, whether or not that substance has been subjected to any process or treatment, and includes malt extract and glucose syrup but does not include edible gums;
- “permitted antioxidant” means any antioxidant in so far as its use is permitted by the Antioxidants in Food (Scotland) Regulations 1978(4);
- “permitted colouring matter” means any colouring matter in so far as its use is permitted by the Colouring Matter in Food (Scotland) Regulations 1973(5);
- “permitted emulsifier” and “permitted stabiliser” mean respectively any emulsifier and any stabiliser specified in Part I of Schedule 1, which complies with the specific purity criteria in relation to that emulsifier or stabiliser specified or referred to in Part II of that Schedule and, so far as is not otherwise provided in any such specific purity criteria, with the general purity criteria in Part III of that Schedule, or any mixture of two or more such emulsifiers or stabilisers or emulsifiers and stabilisers;
- “permitted miscellaneous additive” means any miscellaneous additive in so far as its use is permitted by the Miscellaneous Additives in Food (Scotland) Regulations 1980(6);
- “permitted preservative” means any preservative in so far as its use is permitted by the Preservatives in Food (Scotland) Regulations 1989(7);
- “permitted solvent” means any solvent in so far as its use is permitted by the Solvents in Food (Scotland) Regulations 1968(8);
- “permitted sweetener” means any sweetener in so far as its use is permitted by the Sweeteners in Food (Scotland) Regulations 1983(9);
- “sell” includes offer or expose for sale or have in possession for sale and “sale” and “sold” shall be construed accordingly;
- “soft drink” has the meaning assigned to it by the Soft Drinks (Scotland) Regulations 1964(10);
- “specified food” means any food of a description specified in column 2 of Part II or column 1 of Part III of Schedule 2;
- “specified sugar product” has the meaning assigned to it by the Specified Sugar Products (Scotland) Regulations 1976(11).

(2) Unless a contrary intention is expressed, all proportions mentioned in these Regulations are proportions calculated by weight of the product as sold.

(4) S.I. 1978/492; relevant amending instruments are S.I. 1980/1886, 1983/1497, 1984/1518

(5) S.I. 1973/1310; relevant amending instruments are S.I. 1975/1595, 1976/2232, 1979/107, 1987/1985

(6) S.I. 1980/1889; relevant amending instruments are S.I. 1982/515, 1983/1497, 1984/1518

(7) S.I. 1989/581

(8) S.I. 1968/263; relevant amending instruments are S.I. 1980/1887, 1983/1497, 1984/1518

(9) S.I. 1983/1497; relevant amending instrument is S.I. 1988/2084

(10) S.I. 1964/767; relevant amending instruments are S.I. 1969/1847, 1970/1619, 1977/1026, 1983/1497 and 1988/2084

(11) S.I. 1976/946; relevant amending instrument is S.I. 1982/410

(3) Any reference in these Regulations to a label borne on a container shall be construed as including a reference to any legible marking on the container however effected.

(4) For the purposes of these Regulations, the supply of food, otherwise than by sale, at, in or from any place where food is supplied in the course of a business shall be deemed to be a sale of that food.

(5) Any reference in these Regulations to a numbered regulation or Schedule shall, unless the reference is to a regulation of, or Schedule to, specified Regulations, be construed as a reference to the regulation or Schedule bearing that number in these Regulations.

Exemptions

3. The provisions of these Regulations shall not apply to food having any emulsifier or stabiliser in it or on it or to any emulsifier or stabiliser which, in each case, is intended at the time of sale or importation, as the case may be, for exportation to any place outside the United Kingdom.

Sale, etc., of food containing emulsifiers or stabilisers

4.—(1) Subject to the provisions of this regulation, no food sold or imported into Scotland shall have in it or on it any added emulsifier or added stabiliser other than a permitted emulsifier or permitted stabiliser.

(2) No food sold or imported into Scotland shall have in it or on it any added permitted emulsifier or added permitted stabiliser specified in Part I of Schedule 2 or any combination of those substances in a proportion exceeding 150,000 milligrams per kilogram.

(3) No food sold or imported into Scotland shall have in it or on it any added permitted emulsifier or added permitted stabiliser specified in column 1 of Part II of Schedule 2 unless the food is a specified food prescribed in relation to that emulsifier or stabiliser in column 2 of that Part of that Schedule and the proportion of that emulsifier or stabiliser in or on the food does not exceed the proportion prescribed in column 3 of that Part of that Schedule.

(4) No specified food prescribed in column 1 of Part III of Schedule 2 sold or imported into Scotland shall have in it or on it any added permitted emulsifier or added permitted stabiliser unless the emulsifier or stabiliser is prescribed in relation to that specified food in column 2 of that Part of that Schedule and the proportion of the emulsifier or stabiliser in or on the food does not exceed the proportion prescribed in column 3 of that Part of that Schedule.

(5) Nothing in the two preceding paragraphs shall prohibit the presence in or on any food, which has in it or on it any specified food, of any permitted emulsifier or permitted stabiliser of the description prescribed for, and in the amount appropriate to the quantity of, that specified food in accordance with the two preceding paragraphs:

Provided that where, by reason of the use of a tin-greasing emulsion in its preparation, any food has present in it or on it—

- (a) the permitted emulsifier oxidatively polymerised soya bean oil, that permitted emulsifier shall be present in a proportion not exceeding 50 milligrams per kilogram;
- (b) the permitted emulsifier polyglycerol esters of dimerised fatty acids of soya bean oil, that permitted emulsifier shall be present in a proportion not exceeding 20 milligrams per kilogram.

(6) Nothing in paragraph (4) of this regulation shall prohibit the presence in or on any bread, by reason of the use of a tin-greasing emulsion in its preparation, of any permitted emulsifier or permitted stabiliser not specified in the proviso to the preceding paragraph or in column 2 of item (a) of Part III of Schedule 2 in a proportion not exceeding 50 milligrams per kilogram.

(7) No flour, intended for sale as such, shall contain any emulsifier or stabiliser.

(8) No person shall sell or import into Scotland any food which does not comply with this regulation.

Sale, advertisement and labelling of emulsifiers and stabilisers

5.—(1) No person shall sell or import into Scotland or advertise for sale any emulsifier or stabiliser (including any emulsifier or stabiliser with which any other substance has been mixed) for use as an ingredient in the preparation of food unless such emulsifier or stabiliser is a permitted emulsifier or permitted stabiliser.

(2) No person shall sell any permitted emulsifier or any permitted stabiliser (including any such permitted emulsifier or permitted stabiliser with which any other substance has been mixed) for use as an ingredient in the preparation of food except in a container bearing a label which complies with the requirements of Schedule 3.

6. No person shall—

- (a) give with any permitted emulsifier or permitted stabiliser sold by him for use as an ingredient in the preparation of food any label, whether attached to or borne on the container or not, or display with any permitted emulsifier or permitted stabiliser offered or exposed by him for sale for such use any ticket or notice, or
- (b) publish, or be a party to the publication of, any advertisement of any permitted emulsifier or permitted stabiliser for sale for use as an ingredient in the preparation of food,

which bears or includes any words, device or description calculated to indicate either directly or indirectly that the emulsifier or stabiliser is a substitute for fat or eggs.

Condemnation of food

7. Where any food is certified by a public analyst as being food which it is an offence against regulation 4 to sell or import into Scotland that food may be treated for the purposes of section 9 of the Act (under which food may be seized and destroyed on the order of a justice of the peace) as being unfit for human consumption.

Offences, penalties and enforcement

8.—(1) If any person contravenes or fails to comply with any of the foregoing provisions of these Regulations he shall be guilty of an offence and shall be liable on—

- (a) summary conviction to a fine not exceeding the statutory maximum, or
- (b) conviction on indictment to a fine or to imprisonment for a term not exceeding one year or both.

(2) Each district and islands council shall enforce and execute these Regulations in its area.

Defences

9. In any proceedings for an offence against these Regulations in relation to the publication of an advertisement, it shall be a defence for the accused to prove that, being a person whose business it is to publish or arrange for the publication of advertisements, he received the advertisement for publication in the ordinary course of business.

Application of various sections of the Act

10.—(1) Subject to paragraph (2) of this regulation, the following provisions of the Act shall apply for the purposes of these Regulations as if references therein to proceedings, or a prosecution,

under or taken or brought under the Act included references to proceedings, or a prosecution, as the case maybe, taken or brought for an offence under these Regulations—

- (a) section 41(2), (3) and (5) (which relates to prosecutions);
- (b) section 42(1), (2) and (3) (which relates to evidence of analysis);
- (c) section 44 (which relates to a requirement for analysis by the Government Chemist);
- (d) section 45 (which relates to a contravention due to default by some other person);
- (e) section 46(2) (which relates to the conditions under which a warranty may be pleaded as a defence); and
- (f) section 47 (which relates to offences in relation to warranties and certificates of analysis).

(2) Section 44 shall apply for the purposes of these Regulations as if the reference therein to section 41(5) of the Act included a reference to that sub-section as applied by paragraph (1) of this regulation.

Revocations

11. The Regulations specified in the first and second columns of Schedule 4 are hereby revoked to the extent specified in relation thereto in the third column of that Schedule.

St Andrew's House,
Edinburgh
5th June 1989

Sanderson of Bowden
Minister of State, Scottish Office