
STATUTORY INSTRUMENTS

2003 No. 1659

The Cocoa and Chocolate Products (England) Regulations 2003

Title, commencement and application

1. These Regulations may be cited as the Cocoa and Chocolate Products (England) Regulations 2003, shall come into force on 3rd August 2003 and shall apply to England only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

“catering establishment” means a restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed or mobile stall) where, in the course of a business, food is prepared for delivery to the ultimate consumer and is ready for consumption without further preparation;

“designated product” means any cocoa or chocolate product specified in column 2 of Schedule 1, as read with any Note to that Schedule and any provision of regulation 3 and Schedule 2 relating to that product; and “designated chocolate product” and “designated cocoa product” mean any such product which is respectively a chocolate product or a cocoa product;

“EEA Agreement” means the Agreement on the European Economic Area⁽¹⁾ signed at Oporto on 2nd May 1992 as adjusted by the Protocol⁽²⁾ signed at Brussels on 17th March 1993;

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

“food authority” does not include—

- (a) the council of a district in a non-metropolitan county except where the county functions have been transferred to that council pursuant to a structural change, or
- (b) the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner and the Middle Temple);

“the 1996 Regulations” means the Food Labelling Regulations 1996⁽³⁾;

“other edible substances” does not include vegetable fats referred to in regulation 3 or the filling of any product specified in column 2 of item 7 or of item 10(a) of Schedule 1;

“preparation” includes manufacture and any form of processing or treatment;

“reserved description”, as respects any designated product, means any description specified in relation to that product in column 1 of Schedule 1;

“sell” includes offer or expose for sale or have in possession for sale, and “sale” shall be construed accordingly; and

“ultimate consumer” means any person who buys otherwise than—

- (a) for the purpose of resale,

⁽¹⁾ OJ No. L1, 3.1.94, p.1.

⁽²⁾ OJ No. L1, 3.1.94, p.571.

⁽³⁾ S.I.1996/1499, the relevant amending instrument is S.I. 1998/1398.

- (b) for the purposes of a catering establishment, or
- (c) for the purposes of a manufacturing business.

(2) Any reference in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule bearing that number in these Regulations.

Vegetable fats in chocolate products

3.—(1) Subject to paragraph (2) below, the vegetable fats, other than cocoa butter, specified in Schedule 2 may be added to those designated chocolate products specified in column 2 of items 3, 4, 5, 6, 8 and 9 of Schedule 1.

(2) An addition in accordance with paragraph 1 may not exceed 5 per cent of the finished product, after deduction of the total weight of any other edible substances used in accordance with the Note 1 to Schedule 1, without reducing the minimum content of cocoa butter or total dry cocoa solids.

Scope of Regulations

4. These Regulations apply to designated products intended for human consumption and ready for delivery to the ultimate consumer or to a catering establishment.

Reserved descriptions

5. No person shall sell any food with a label, whether or not attached to or printed on the wrapper or container, which bears, comprises or includes any reserved description or any derivative thereof or any word or description substantially similar thereto unless—

- (a) such food is the designated product to which the reserved description relates;
- (b) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that the substance to which it relates is only an ingredient of that food; or
- (c) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that such food is not and does not contain a designated product.

Labelling and description of designated products

6.—(1) Without prejudice to the generality of Part II of the 1996 Regulations, no person shall sell any designated product unless it is marked or labelled with the following particulars—

- (a) subject to paragraphs (2)(a) and (3) below, a reserved description of the product;
- (b) subject to paragraph (2) of regulation 7, in the case of a designated chocolate product which, pursuant to regulation 3, contains vegetable fats other than cocoa butter, the conspicuous and clearly legible statement “contains vegetable fats in addition to cocoa butter”;
- (c) where the words “milk chocolate” are used as the reserved description or a qualification of the reserved description of a designated chocolate product, an accompanying indication of the dry milk solids content in the form “milk solids ... % minimum”, provided that—
 - (i) as regards a designated chocolate product specified in column 2 of item 4(a) of Schedule 1, the dry milk solids content indicated is not less than 14 per cent; and
 - (ii) as regards a designated chocolate product specified in column 2 of item 5 of Schedule 1, the dry milk solids content indicated is not less than 20 per cent;
- (d) subject to paragraph (4) below, in the case of a designated product specified in column 2 of item 2(c), 2(d), 2(e), 3, 4, 5, 8 or 9 of Schedule 1, an indication of the total dry cocoa solids content in the form “cocoa solids ... % minimum”;

- (e) in the case of a designated cocoa product specified in column 2 of item 2(b) or 2(e), an indication of the cocoa butter content.
- (2) Where designated chocolate products specified in column 2 of items 3, 4, 5, 6, 7 and 10 of Schedule 1 are sold in an assortment—
 - (a) the reserved description may be replaced by “assorted chocolates” or “assorted filled chocolates” or a similar name; and
 - (b) the list of ingredients with which food is required by the 1996 Regulations to be marked or labelled may be a single list of ingredients for all the products in the assortment.
- (3) The reserved descriptions “chocolate”, “milk chocolate” and “couverture chocolate” may be supplemented by information or descriptions relating to quality criteria provided that the product contains —
 - (a) in the case of the reserved description “chocolate”, not less than 43 per cent total dry cocoa solids, including not less than 26 per cent cocoa butter;
 - (b) in the case of the reserved description “milk chocolate”, not less than 30 per cent total dry cocoa solids and not less than 18 per cent dry milk solids obtained by partly or wholly dehydrating whole milk, semi-skimmed or skimmed milk, cream, or from partly or wholly dehydrated cream, butter or milk fat, including not less than 4.5 per cent milk fat;
 - (c) in the case of the reserved description “couverture chocolate”, not less than 16 per cent dry non-fat cocoa solids.
- (4) The total dry cocoa solids content with which a designated product is required by paragraph (1)(d) above to be marked or labelled shall be calculated after deduction of the weight of other edible substances provided for in Note 1 to Schedule 1 but not the weight of any ingredient specified in column 2 of Schedule 1 as an ingredient of that product or of any vegetable fat added in accordance with regulation 3.

Manner of marking or labelling

7.—(1) Regulations 35, 36(1) and (5) and 38 of the 1996 Regulations (which relate to the manner of marking or labelling of food) shall apply to the particulars with which a designated product is required to be marked or labelled by regulation 6 of these Regulations as if they were particulars with which food is required to be marked or labelled by the 1996 Regulations.

(2) The information with which a designated chocolate product is required to be marked or labelled by paragraph (1)(b) of regulation 6 shall be—

- (a) in the same field of vision as the list of ingredients with which the product is required by the 1996 Regulations to be marked or labelled;
- (b) clearly separated from that list;
- (c) in bold lettering no less large than that of the list; and
- (d) located near the reserved description, which may also appear elsewhere on the marking or labelling.

Penalties and enforcement

8.—(1) If any person contravenes or fails to comply with any provision of regulation 5 or 6 he shall be 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.

Defence in relation to exports

9. In any proceedings for an offence under these Regulations it shall be a defence for the person accused to prove—

- (a) that the food in respect of which the offence is alleged to have been committed was intended for export to a country which has legislation analogous to these Regulations and that the food complies with that legislation; and
- (b) in the case of export to an EEA State, that the legislation complies with the provisions of Directive [2000/36/EC](#) of the European Parliament and the Council relating to cocoa and chocolate products intended for human consumption⁽⁴⁾.

Application of various provisions of the Food Safety Act 1990

10. 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 for the purposes of these Regulations as a reference to these Regulations—

- (a) section 2 (extended meaning of sale etc.);
- (b) section 3 (presumptions that food is intended for human consumption);
- (c) section 20 (offences due to fault of another person);
- (d) section 21 (defence of due diligence) as it applies for the purposes of section 8, 14 or 15 of the Act;
- (e) section 22 (defence of publication in the course of business);
- (f) section 30(8) (which relates to documentary evidence);
- (g) section 33(1) (obstruction etc. of officers);
- (h) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above”, shall be deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (g) above;
- (i) section 35(1) (punishment of offences) in so far as it relates to offences under section 33(1) as applied by sub-paragraph (g) above;
- (j) section 35(2) and (3) in so far as it relates to offences under section 33(2) as applied by sub-paragraph (h) above;
- (k) section 36 (offences by bodies corporate); and
- (l) section 44 (protection of officers acting in good faith).

Amendments and revocations

11.—(1) In the 1996 Regulations (in so far as they apply to England) in regulation 4(2) (scope of Part II) sub-paragraph (b) shall be omitted.

(2) The following entries relating to the Cocoa and Chocolate Products Regulations 1976⁽⁵⁾ shall (in so far as the following Regulations apply to England), be omitted—

- (a) in the Food (Revision of Penalties) Regulations 1982⁽⁶⁾, in Schedule 1;
- (b) in the Food (Revision of Penalties) Regulations 1985⁽⁷⁾, in Schedule 1, Part I;

⁽⁴⁾ OJ No. L197, 3.8.2000. p. 19, as adopted by EEA Joint Committee Decision 152/2001 (OJ No. L65, 7.3.2002, p. 26).

⁽⁵⁾ S.I. 1976/541; relevant amending instruments S.I. 1982/17, 1982/1727, 1985/67, 1990/2486, 1991/1476, 1992/2596, 1995/3187, 1996/1499.

⁽⁶⁾ S.I. 1982/1727 to which there are amendments not relevant to these Regulations.

⁽⁷⁾ S.I. 1985/67 to which there are amendments not relevant to these Regulations.

- (c) in the Food Safety Act 1990 (Consequential Modifications) (England and Wales) Order 1990(8), in Schedule 1, Part I, Schedule 2, Schedule 3, Part I and Schedules 6 and 12;
 - (d) in the Food Safety (Exports) Regulations 1991(9) in Schedule 1, Part I;
 - (e) in the Food (Forces Exemptions) (Revocations) Regulations 1992(10), in Schedule 1, Part I;
 - (f) in the Miscellaneous Food Additives Regulations 1995(11), in Schedule 9;
 - (g) in the 1996 Regulations, in regulation 49(4)(a) and Schedule 9;
 - (h) in the Miscellaneous Food Additives (Amendment) Regulations 1999(12), in regulation 14(1);
 - (i) in the Miscellaneous Food Additives (Amendment) (England) (No. 2) Regulations 2001(13), in regulation 9(2).
- (3) In Schedule 9 to the Miscellaneous Food Additives Regulations 1995 (in so far as they apply to England) the entry relating to the Cocoa and Chocolate Products (Amendment) Regulations 1982(14) shall be omitted.
- (4) In so far as the Regulations in which they appear apply to England, there shall be substituted for the following references to Directive 73/241/EEC(15), references to Directive 2000/36/EC(16)—
- (a) in the Colourings in Food Regulations 1995(17), in Schedule 2;
 - (b) in the Miscellaneous Food Additives Regulations 1995(18), in Schedule 3 and in Schedule 7.
- (5) The Cocoa and Chocolate Products Regulations 1976 and the Cocoa and Chocolate Products (Amendment) Regulations 1982 are hereby revoked (in so far as they apply to England).

Transitional provision

12. In any proceedings for an offence under these Regulations it shall be a defence for the accused to prove that—

- (a) the food concerned was marked or labelled before 3rd August 2003, and
- (b) the matters constituting the alleged offence would not have constituted an offence under the Cocoa and Chocolate Products Regulations 1976 as they stood immediately before the date of coming into force of these Regulations.

(8) S.I. 1990/2486 to which there are amendments not relevant to these Regulations.

(9) S.I. 1991/1476 to which there are amendments not relevant to these Regulations.

(10) S.I. 1992/2596 to which there are amendments not relevant to these Regulations.

(11) S.I. 1995/3187; relevant amending instruments are S.I. 1997/1413, 1999/1136, 2000/3323, 2001/60 and 2001/3775.

(12) S.I. 1999/1136.

(13) S.I. 2001/3775.

(14) S.I. 1982/17.

(15) OJ No. L228, 16.8.1973, p.23, as repealed with effect from 3rd August 2003 by Directive 2000/36/EC (OJ No. L197, 3.8.2000, p.19).

(16) OJ No. L197, 3.8.2000, p.19.

(17) S.I. 1995/3124 to which there are amendments not relevant to these Regulations.

(18) S.I. 1995/3187; the relevant amending instrument is S.I. 1999/1136.

Signed by authority of the Secretary of State for Health

25th June 2003

Melanie Johnson
Parliamentary Under-Secretary of State,
Department of Health