

## SCHEDULE 3

### Amendments to statutory instruments

#### **The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2009**

5. The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2009(1) are amended as follows—

(a) after regulation 3, insert—

##### **“Application of the improvement notice provisions of the Act**

**3A.**—(1) Section 10(1) and (2) of the Act (improvement notices) applies, with the modification (in the case of section 10(1)) specified in Part 1 of Schedule 2, for the purposes of—

- (a) enabling an improvement notice to be served on a person requiring the person to secure compliance with the specified provisions contained in Schedule 1; and
- (b) making the failure to comply with a notice referred to in subparagraph (a) an offence.

(2) Section 32(1) to (8) of the Act (powers of entry) applies, with the modification (in the case of section 32(1)) specified in Part 2 of Schedule 2, for the purposes of enabling an authorised officer of an enforcement authority—

- (a) to exercise a power of entry to ascertain whether food that does not comply with one or more of the specified provisions contained in Schedule 1 is, or has been, sold; and
- (b) to exercise a power of entry to ascertain whether there is any evidence of any contravention of the specified provisions contained in Schedule 1.

(3) Section 35 of the Act (punishment of offences) applies, with the modification specified in Part 3 of Schedule 2, for the purpose of specifying the punishment of an offence committed under paragraph (1)(b).

(4) Section 37(1), (3), (5) and (6) of the Act (appeals) applies, with the modification (in the case of section 37(1), (5) and (6)) specified in Part 4 of Schedule 2, for the purpose of enabling a decision to serve a notice referred to in paragraph (1)(a) to be appealed.

(5) Section 39 of the Act (appeals against improvement notices) applies, with the modification (in the case of section 39(3)) specified in Part 5 of Schedule 2, for the purpose of dealing with appeals against a decision to serve a notice referred to in paragraph (1)(a).”;

- (b) in the title of the Schedule, in place of “The Schedule” substitute “Schedule 1”;
- (c) for the shoulder note to Schedule 1 substitute “Regulations 2(1), 3(1), and 3A(1) and (2)”;
- and
- (d) after Schedule 1, insert—

“SCHEDULE 2

Regulation 3A

Modification of the improvement notice provisions of the Act

PART 1

Modification of section 10(1)

1. For section 10(1) (improvement notices) substitute—

“(1) If an authorised officer of an enforcement authority has reasonable grounds for suspecting that a person is failing to comply with the provisions specified in Schedule 1 of the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2009, the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”)—

- (a) state the officer’s grounds for suspecting that the person is failing to comply or, as the case may be, that the food does not comply with the relevant provision;
- (b) specify the matters which constitute the failure to so comply;
- (c) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or such measures that are at least equivalent to them, within such period as may be specified in the notice.”

PART 2

Modification of section 32(1)

2. For paragraphs (a) to (c) of section 32(1) (powers of entry) substitute—

- “(a) to enter any premises within the authority’s area for the purpose of ascertaining whether there has been any contravention of the provisions specified in Schedule 1 of the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2009; and
- (b) to enter any business premises, whether within or outside the authority’s area, for the purpose of ascertaining whether there is on the premises any evidence of any contravention of that regulation;”.

PART 3

Modification of section 35

3. In section 35 (punishment of offences), after subsection (1), insert—

“(1A) A person guilty of an offence under section 10(2), as applied by regulation 3A(1) of the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2009, is liable, on summary conviction, to a fine.”

## PART 4

### Modification of section 37(1), (5) and (6)

4. For section 37(1) (appeals) substitute—

“(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve an improvement notice under section 10(1) as applied and modified by regulation 3A(1) of, and Part 1 of Schedule 2 to, the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2009, may apply to the magistrates’ court.”

5. For section 37(5) substitute—

“(5) The period within which such an appeal as is mentioned in subsection (1) above may be brought shall be—

- (a) one month from the date on which notice of the decision was served on the person desiring to appeal; or
- (b) the period specified in the improvement notice,

whichever ends the earlier; and in the case of such an appeal, the making of the complaint shall be deemed for the purposes of this subsection to be the bringing of the appeal.”

6. In section 37(6)—

- (a) for “(3) or (4)” substitute “(1)”; and
- (b) in paragraph (a), omit “or to the sheriff”.

## PART 5

### Modification of section 39(3)

7. In section 39(3) (appeals against improvement notices), omit “for want of prosecution”.