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SCOTTISH STATUTORY INSTRUMENTS

2005 No.214

FOOD

The Miscellaneous Food Additives Amendment (Scotland) Regulations 2005

Made - - - -	*12th April 2005*
Laid before the Scottish Parliament - - - -	*13th April 2005*
Coming into force - -	*5th May 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 16(1)(a), 17(1), 26(1) and (3) and 48(1) of, and paragraph 1 of Schedule 1 to, the Food Safety Act 1990(**1**) and of all other powers enabling them in that behalf, having had regard in accordance with section 48(4A)(**2**) of that Act to relevant advice given by the Food Standards Agency, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Miscellaneous Food Additives Amendment (Scotland) Regulations 2005 and shall come into force on 5th May 2005.

(2) These Regulations extend to Scotland only.

Commencement Information

I1 Reg. 1 in force at 5.5.2005, see **reg. 1(1)**

(**1**) 1990 c. 16; section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990; sections 16(1) and 48(1) were amended by the Food Standards Act 1999 (c. 28) ("the 1999 Act"), section 40(1) and Schedule 5, paragraph 8; section 17(1) was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, section 40(4) and Schedule 6; section 48(4) is disapplied in respect of these Regulations by virtue of section 48(4C), inserted by S.I. 2004/2990; section 53(2) was amended by the 1999 Act, section 40(4) and Schedule 6, and by S.I. 2004/2990; amendments made by Schedule 5 to the 1999 Act shall 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 were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998. Insofar as not so 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).

(**2**) Section 48(4A) was inserted by the Food Standards Act 1999 (c. 28) Act, Schedule 5, paragraph 21.

Amendment to the Miscellaneous Food Additives Regulations 1995

2. The Miscellaneous Food Additives Regulations 1995(**3**) are amended in accordance with regulations 3 to 14 below.

3. In regulation 2(1) (interpretation)–

(a) after the definition of "colour", insert–

> ""Directive 88/388/EEC" means Council Directive 88/388/EEC(**4**) on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production as corrected by corrigenda published on 14th December 1988(**5**) and 10th April 1996(**6**) and as amended by Commission Directive 91/71/EEC(**7**) and Regulation (EC) No. 1882/2003 of the European Parliament and of the Council(**8**);";

(b) in the definition of "Directive 95/2/EC(**9**)" for "and European Parliament and Council Directive 2001/5/EC", substitute–

> ", European Parliament and Council Directive 2001/5/EC(**10**) and European Parliament and Council Directive 2003/114/EC(**11**);";

(c) after the definition of "flavour enhancer", insert–

> ""flavouring" has the same meaning as in Article 1.2 of Directive 88/388/EEC(**12**);"; and

(d) for the definition of "stabiliser", substitute–

> ""stabiliser" means any substance which makes it possible to maintain the physico–chemical state of a foodstuff; including any substance which enables the maintenance of a homogenous dispersion of two or more immiscible substances in a foodstuff, substances which stabilise, retain or intensify an existing colour of a foodstuff and substances which increase the binding capacity of the food, including the formation of cross–links between proteins enabling the binding of food pieces into re–constituted food;".

4. In regulation 4(1) (use of miscellaneous additives in or on compound foods), after "food" in the third place that it occurs, insert "or a flavouring".

5. After regulation 4, insert–

"**Use of permitted miscellaneous additives in flavourings**

4A.—(1) Where–

(a) a permitted miscellaneous additive is used in a flavouring,

(b) that flavouring is an ingredient of a compound food, and

(c) the permitted miscellaneous additive performs a technological purpose in the final food,

(**3**) S.I. 1995/3187, as relevantly amended by S.I. 1997/1413 and 1999/1136 and S.S.I. 2001/38, 103 and 450, 2003/132, 291, 293, 311 and 599, and 2004/6 and 413.
(**4**) O.J. No. L 184, 15.7.88, p.61.
(**5**) O.J. No. L 345, 14.12.88, p.29.
(**6**) O.J. No. L 89, 10.4.96, p.46.
(**7**) O.J. No. L 42, 15.2.91, p.25.
(**8**) O.J. No. L 284, 31.10.03, p.1.
(**9**) O.J. No. L 61, 18.3.95, p.1, as corrected by corrigendum to 95.2.EC (O.J. No. L 248, 14.10.95, p.60).
(**10**) O.J. No. L 55, 24.2.01, p.59.
(**11**) O.J. No. L 24, 29.1. 04, p.58.
(**12**) O.J. No. L. 184, 15.7.88, p.61.

the permitted miscellaneous additive shall be regarded for the purposes of these Regulations as an additive of the final food.

(2) No person shall use any permitted miscellaneous additive in or on any flavouring where–

(a) the level of such additives used exceeds the minimum necessary to guarantee the safety and quality of the flavouring and to facilitate its storage, or

(b) the presence of such additives is a hazard to human health, or misleading to the consumer.".

6. In regulation 11 (transitional provision and exemptions), after paragraph (1E), insert–

"(1F) In any proceedings for an offence under these Regulations in respect of any food additive, food or flavouring, it shall be a defence to prove–

(a) the food additive, food or flavouring concerned was put on the market or labelled before 27th January 2006; and

(b) the matter constituting the offence would not have constituted an offence under these Regulations if the amendments made by regulations 3 to 6, 7(b), 8, 9(a), 10, 11(a) to (c), (e) to (i), (k) and (l) of the Miscellaneous Food Additives Amendment (Scotland) Regulations 2005 had not been made when the food additive, food or flavouring was placed on the market or labelled.".

7. In Schedule 1 (miscellaneous additives generally permitted for use in foods not referred to in Schedule 6, 7 or 8)–

(a) for Note 1, substitute–

"(1) The substances E 407, E 407a and E 440 may be standardised with sugars, on condition that this is stated in addition to the number and designation.";

(b) in the entry relating to E 170, in the second column, for "Calcium carbonates (i) Calcium carbonate (ii) Calcium hydrogen carbonate", substitute "Calcium carbonate";

(c) in the entry relating to E 466, in the second column, insert at the end–

"Cellulose gum";

(d) in the entry relating to E 469, in the second column, insert at the end–

"Enzymatically hydrolysed cellulose gum".

8. In Schedule 2 (conditionally permitted preservatives and antioxidants), Part A (sorbates, benzoates and p-hydroxybenzoates)–

(a) in the first column of the second table, for "Partially baked, pre–packed bakery wares intended for retail sale", substitute–

"Partially baked, pre–packed bakery wares intended for retail sale and energy–reduced bread intended for retail sale";

(b) at the end of the second table insert–

"(i) Crayfish tails, cooked, and pre packed marinated	2000	"; and

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	cooked molluscs		
"(ii) Flavourings			1500".

9. In Schedule 2, Part C (other preservatives)–

(a) omit the entries relating to E 230;

(b) for the entries relating to E 1105, substitute–

"E 1105	Lysozyme)	Ripened cheese	*quantum satis*
	)	Wine in accordance with Regulation (EC) No 1493/1999(**13**) and its implementing Regulation (EC) No 1622/2000(**14**)	*Pro memoria".*

10. In Schedule 2 Part D (other antioxidants)–

(a) for the entry relating to E 310, E 311, E 312, E 320 and E 321, substitute–

"E 310 E 311 E 312 E 320 E321	Propyl gallate } Octyl gallate } Dodecyl gallate } Butylated hydroxyanisole (BHA) } Butylated hydroxytoluene (BHT) }	Fats and oils for the professional manufacture of heat-treated foods Frying oil and frying fat, excluding olive pomace oil Lard; fish oil; beef, poultry and sheep fat	} 200[(1)] (gallates and BHA, individually or in combination) } 100[(1)] (BHT) } both expressed on fat } Note: } [(1)] When combinations of gallates, BHA and BHT are used, the individual levels must be reduced proportionally.
	}	Cake mixes Cereal-based snack foods Milk powder for vending machines	} 200 (gallates and BHA, individually or in combination) } expressed on fat

(**13**) O.J. No. L 179, 14.7.99, p.1.
(**14**) O.J. No. L 194, 31.7.00, p.1.

	Dehydrated soups and broths Sauces Dehydrated meat Processed nuts Seasonings and condiments Pre-cooked cereals	
}	Dehydrated potatoes	} 25 (gallates and BHA, individually or in combination)
}	Chewing gum Dietary supplements	} 400 (gallates, BHT and BHA, individually or in combination)
}	Essential oils (E 310, E 311, E 312 and E 320 only)	} 1000 mg/kg (gallates and BHA, individually or in combination) E 310, E 311, E 312 and E 320 only
}	Flavourings other than essential oils (E 310, E 311, E 312 and E 320 only)	} 100 mg/kg (gallates, individually or in combination) or 200 mg/kg (BHA) E 310, E 311, E 312 and E 320 only"; and

(b) in the entry relating to E 315 and E 316, in the third column, for "Semi preserved and preserved meat products", substitute–

"Cured meat products and preserved meat products".

11. In Schedule 3 (other permitted miscellaneous additives)–

(a) in the entry relating to E 338, E 339, E 340, E 341, E 343, E 450, E 451 and E 452–

(i) in the third column, insert at the end the entry "Flavourings" and in the fourth column insert the corresponding entry "40 g/kg";

(ii) in the third column, omit the entry "cider and perry" and, where it occurs in the corresponding entry in the fourth column, omit "2 g/l";

(b) in the entry relating to E 416, in the third column, insert at the end the entry "Flavourings" and in the fourth column insert the corresponding entry "50 g/kg";

(c) for the entry relating to E 432, E 433, E 434, E 435 and E 436, substitute–