SCOTTISH STATUTORY INSTRUMENTS

2005 No. 1

FOOD

The Food Labelling (Added Phytosterols or Phytostanols) (Scotland) Regulations 2005

Made - - - -	*10th January 2005*
Laid before the Scottish Parliament - - - -	*10th January 2005*
Coming into force - -	*1st February 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(e) and (f), 17(2), 26(1) and (3) and 48(1) of the Food Safety Act 1990(**1**) and all other powers enabling them in that behalf, after 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 Food Labelling (Added Phytosterols or Phytostanols) (Scotland) Regulations 2005 and shall come into force on 1st February 2005.

(2) The Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Food Safety Act 1990;

"biscuits" includes wafers, rusks, oatcakes and matzos;

"the Commission Regulation" means Commission Regulation (EC) No. 608/2004(**3**) concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytostanols and/or phytostanol esters;

(**1**) 1990 c. 16; section 1(1) and (2) (definition of food) was substituted by S.I.2004/2990; section 53(2) was amended by Schedule 6 to the Food Standards Act 1999 (c. 28) ("the 1999 Act") and S.I. 2004/2990; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c. 40), Schedule 9, paragraph 6 and by the 1999 Act, Schedule 5, paragraph 10(3); sections 16(1) and 48(1) were amended by the 1999 Act, Schedule 5, paragraph 8; section 26(3) was amended by the 1999 Act, Schedule 6; section 48(4) is disapplied in respect of these regulations by virtue of section 48(4C), inserted 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) ("the 1998 Act") 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 1998 Act.

(**2**) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(**3**) O.J. No. L 97, 1.4.04, p.44.

"confectionery product" means any item of chocolate confectionery or sugar confectionery;

"Directive 2000/13" means Directive 2000/13/EC of the European Parliament and of the Council(**4**) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as corrected by a corrigendum published on 25th May 2000(**5**) and as amended by Commission Directive 2001/101/EC(**6**) (which was itself amended by Commission Directive 2002/86/EC(**7**)), the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded(**8**) and Directive 2003/89/EC of the European Parliament and of the Council(**9**);

"edible ice" includes ice-cream, water ice and fruit ice, whether alone or in combination, and any similar food;

"fancy confectionery product" means any confectionery product in the form of a figure, animal, cigarette or egg or in any other fancy form;

"flour confectionery" means any cooked food which is ready for consumption without further preparation (other than reheating), of which a characterising ingredient is ground cereal, including shortbread, sponges, crumpets, muffins, macaroons, ratafias, pastry and pastry cases, and also includes meringues, petits fours and uncooked pastry and pastry cases, but does not include bread, pizzas, biscuits, crispbread, extruded flat bread or any food containing a filling which has as an ingredient any cheese, meat, offal, fish, shellfish, vegetable protein material or microbial protein material;

"local authority" means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(**10**);

"the key particulars" means those particulars specified in items 1 and 5 in the second sub paragraph of Article 2 of the Commission Regulation;

"prepacked for direct sale" means–

(a) in relation to a food other than flour confectionery, bread and edible ices, prepacked by a retailer for sale by the retailer on the premises where the food is packed or from a vehicle or stall used by the retailer, and

(b) in relation to flour confectionery, bread and edible ices, prepacked by a retailer for sale as in paragraph (a) of this definition, or prepacked by the producer of the food for sale by the retailer either on the premises where the food is produced or on other premises from which the retailer conducts business under the same name as the business conducted on the premises where the food is produced;

"preparation", in relation to food, includes manufacture and any form of processing or treatment;

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

"the specified particulars" means the particulars required by Article 2 of the Commission Regulation.

(2) Food shall be regarded as prepacked for the purposes of these Regulations if–

(**4**) O.J. No. L 109, 6.5.00, p.29.
(**5**) O.J. No. L 124, 25.5.00, p.66.
(**6**) O.J. No. L 310, 28.11.01, p.19.
(**7**) O.J. No. L 305, 7.11.02, p.19.
(**8**) O.J. No. L 236, 23.9.03, p.92.
(**9**) O.J. No. L 308, 25.11.03, p.15.
(**10**) c.39. Section 2 was amended by the Environment Act 1995 Schedule 22, paragraph 232.

(a) it is ready for sale to the ultimate consumer or to a mass caterer; and

(b) it is–

(i) put into packaging before being offered for sale in such a way that the food, whether wholly or only partly enclosed, cannot be altered without opening or changing the packaging, or

(ii) wholly enclosed in packaging before being offered for sale and the food is intended to be cooked without opening the packaging,

but food shall not be regarded as prepacked for the purposes of these Regulations if it comprises an individually wrapped sweet or chocolate which is not enclosed in any further packaging and which is not intended for sale as an individual item.

(3) Other expressions used both in these Regulations and in Directive 2000/13 have the same meaning in these Regulations as they have in that Directive.

Offences and penalties

3. Subject to regulation 4, any person who–

(a) sells any food in respect of which the labelling requirements of the Commission Regulation apply and which is not labelled with the specified particulars; or

(b) sells any food which is not labelled in accordance with regulation 5, 6 or 7,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Exemption

4. In the case of–

(a) food which is not prepacked;

(b) food which is prepacked for direct sale; or

(c) individually wrapped fancy confectionery products which are not enclosed in any further packaging and which are intended for sale as single items,

such food need not be labelled with any of the specified particulars other than the key particulars.

Manner of labelling: general requirement

5. When any food other than food to which regulation 6 applies is sold, any particulars with which it is required to be labelled by the Commission Regulation shall appear–

(a) on the packaging;

(b) on a label attached to the packaging; or

(c) on a label which is clearly visible through the packaging,

save that, where the sale is otherwise than to the ultimate consumer, such particulars may, alternatively, appear only on the commercial documents relating to the food where it can be guaranteed that such documents, containing all such particulars, either accompany the food to which they relate or were sent before, or at the same time as, delivery of the food.

Manner of labelling: special rules

6.—(1) This regulation applies to–

(a) food which is not prepacked;