SCOTTISH STATUTORY INSTRUMENTS

2004 No. 548

FOOD

The Sweeteners in Food Amendment (Scotland) Regulations 2004

Made - - - -	*21st December 2004*
Laid before the Scottish Parliament - - - -	*22nd December 2004*
Coming into force - -	*29th January 2005*

The Scottish Ministers, in exercise of the powers conferred by sections 16(1)(a) and (e), 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 Sweeteners in Food Amendment (Scotland) Regulations 2004 and come into force on 29th January 2005.

(2) These Regulations extend to Scotland only.

Amendments to the Sweeteners in Food Regulations 1995

2. The Sweeteners in Food Regulations 1995(**3**) are amended in accordance with regulations 3 to 7.

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

(a) at the end of the definition of "Directive 94/35/EC"(**4**), insert–

(**1**) 1990 c. 16; section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990; section 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 48(4) is disapplied in respect of these regulations by virtue of section 48(4C), inserted by S.I. 2004/2990; section 17(1) was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 12; and section 26(3) was amended by the 1999 Act, section 40(1) and Schedule 6. 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 (c. 46).

(**2**) Section 48(4A) was inserted by the 1999 Act, section 40(1) and Schedule 5, paragraph 21.

(**3**) S.I. 1995/3123 as relevantly amended by S.I. 1996/1477, 1997/814, 1999/982 and S.S.I. 2001/212, 2002/61, 2003/274 and 2004/6.

(**4**) The definition of "Directive 94/35/EC" was amended by S.I. 1997/814.

"and by Directive 2003/115/EC of the European Parliament and of the Council(**5**)

(b) in the definition of "Directive 95/31/EC", for "Directive 2000/51 and Directive 2001/52/EC;"(**6**), substitute–

"Directive 2000/51/EC, Directive 2001/52/EC and Directive 2004/46/EC(**7**);"; and

(c) for the definition of "permitted sweetener", substitute–

""permitted sweetener" means any sweetener specified in Column 2 of Schedule 1 which satisfies the specific purity criteria for that sweetener specified in the Annex to Directive 95/31/EC".

(2) In regulation 2(3)(c)(ii), before "saccharin" in the second place where it occurs, insert "the".

4. In regulation 3 (sale and use of sweeteners)–

(a) at the end of paragraph (3), insert–

"as read with the notes to that Schedule"; and

(b) omit paragraph (5)(**8**).

5. In regulation 4(b)(iii) (sale of table-top sweeteners), after "aspartame", insert–

"or salt of aspartame acesulfame".

6. In regulation 11 (transitional provision and exemption), after paragraph (1A)(**9**), insert–

"(1B) In any proceedings for an offence under these Regulations which allege a contravention of regulations 3, 4 or 5, it shall be a defence to prove that–

(a) the act was committed before 29th January 2006;

(b) the act was that of–

(i) selling a sweetener or food;

(ii) using a sweetener in or on food,

which in either case was placed on the market before 29th July 2005; and

(c) the matter constituting the offence would not have constituted an offence under these Regulations if the amendments made by regulations 3(1)(a) or (c) or (2), or 4 to 7 of the Sweeteners in Food Amendment (Scotland) Regulations 2004 had not been in force when the act was committed.".

7. In Schedule 1 (permitted sweeteners and the foods in or on which they may be used)(**10**)–

(a) in the entries in Column 3 relating to "E951 Aspartame", after the entry ""Snacks": certain flavours of ready to eat, pre packed, dry, savoury starch products and coated nuts", insert the entry "*Essoblaten*" and in the corresponding place for that new entry in Column 4, insert "1000 mg/kg";

(b) in the entries relating to "E952 Cyclamic Acid and its Na and Ca salts"–

(i) in the entry in Column 4 relating to "Water-based flavoured drinks, energy-reduced or with no added sugar", for "400 mg/l", substitute "250 mg/l";

(ii) in the entry in Column 4 relating to "Milk and milk derivative based or fruit juice based drinks, energy reduced or with no added sugar", for "400 mg/l", substitute "250 mg/l";

(**5**) O.J. No. L 24, 29.1.04, p.65.
(**6**) The references to Directive 2000/51 and Directive 2001/52/EC were substituted by S.S.I. 2002/61.
(**7**) O.J. No. L 114, 21.4.04, p.15.
(**8**) Paragraph (5) was inserted by S.S.I. 2003/274.
(**9**) Paragraph (1A) was inserted by S.I. 1997/814.
(**10**) Schedule 1 was replaced by S.I. 1997/814 and amended by S.S.I. 2002/61.

(iii) omit the entries listed in Columns 3 and 4 under the heading "Confectionery"; and

(iv) omit the entry in Columns 3 and 4 under the heading "Miscellaneous" relating to "Edible ices, energy reduced or with no added sugar";

(c) omit the entries in Columns 2 to 4 relating to Sucralose listed at the end of the Table;

(d) after the entries relating to "E954 Saccharin and its Na, K and Ca salts", insert–

"E955	Sucralose	**Non-alcoholic drinks**	
		– Water-based flavoured drinks, energy-reduced or with no added sugar	300 mg/l
		– Milk- and milk-derivative based or fruit-juice-based drinks, energy-reduced or with no added sugar	300 mg/l
		Desserts and similar products	
		– Water-based flavoured desserts, energy-reduced or with no added sugar	400 mg/kg
		– Milk- and milk-derivative-based preparations, energy-reduced or with no added sugar	400 mg/kg
		– Fruit- and vegetable-based desserts, energy-reduced or with no added sugar	400 mg/kg
		– Egg-based desserts, energy-reduced or with no added sugar	400 mg/kg
		– Cereal-based desserts, energy-reduced or with no added sugar	400 mg/kg
		– Breakfast cereals with a fibre content	400 mg/kg

of more than 15% and containing at least 20% bran, energy reduced or with no added sugar	
– Fat-based desserts, energy-reduced or with no added sugar	400 mg/kg
Confectionery	
– Confectionery with no added sugar	1000 mg/kg
– Cocoa- or dried-fruit-based confectionery, energy-reduced or with no added sugar	800 mg/kg
– Starch-based confectionery, energy-reduced or with no added sugar	1000 mg/kg
– Cornets and wafers, for ice cream, with no added sugar	800 mg/kg
– Breath-freshening micro sweets with no added sugar	2400 mg/kg
– Strongly flavoured freshening throat pastilles with no added sugar	1000 mg/kg
– Chewing gum with no added sugar	3000 mg/kg
– Energy-reduced tablet form confectionery	200 mg/kg
Miscellaneous	
– “Snacks”: certain flavours of ready to eat, pre-packed,	200 mg/kg

dry, savoury starch products and coated nuts	
– *Essoblaten*	800 mg/kg
– Cocoa- , milk- , dried-fruit- or fat-based sandwich spreads, energy-reduced or with no added sugar	400 mg/kg
– Cider and Perry	50 mg/l
– Drinks consisting of a mixture of a non-alcoholic drink and beer, cider, perry, spirits or wine	250 mg/l
– Spirit drinks containing less than 15% alcohol by volume	250 mg/l
– Alcohol-free beer or with an alcohol content not exceeding 1.2% vol	250 mg/l
– “Bière de table/ Tafelbier/Table beer” (original wort content less than 6%) except for “Obergäriges Einfachbier”	250 mg/l
– Beers with a minimum acidity of 30 milli-equivalents expressed as NaOH	250 mg/l
– Brown beer of the “*oud bruin*” type	250 mg/l
– Energy-reduced beer	10 mg/l
– Edible ices, energy-reduced or with no added sugar	320 mg/l
– Canned or bottled fruit, energy-	400 mg/kg