SCOTTISH STATUTORY INSTRUMENTS

2004 No. 187

FOOD

The Food (Jelly Mini-Cups) (Emergency Control) (Scotland) Regulations 2004

Made - - - -	*15th April 2004*
Laid before the Scottish Parliament - - - -	*15th April 2004*
Coming into force - -	*16th April 2004*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Food (Jelly Mini-Cups) (Emergency Control) (Scotland) Regulations 2004 and shall come into force on 16th April 2004.

(2) These Regulations shall extend to Scotland only.

Interpretation

2. In these Regulations–

"the Act" means the Food Safety Act 1990(**2**) and any expression used both in these Regulations and in the Act has the same meaning as in the Act;

"jelly mini-cups" means jelly confectionery of a firm consistence, contained in semi-rigid mini-cups or mini-capsules, intended to be ingested in a single bite by exerting pressure on the mini-cup or mini-capsule to project the confectionery into the mouth;

"prohibited additive" means any of the following food additives:–

(i) E400 alginic acid;

(ii) E401 sodium alginate;

(iii) E402 potassium alginate;

(**1**) 1972 c. 68. Section 2(2) was amended by the Scotland Act 1998 (c. 46) ("the 1998 Act"), Schedule 8, paragraph 15(3). The functions conferred on a Minister of the Crown under section 2(2) of the 1972 Act, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of the 1998 Act.

(**2**) 1990 c. 16.

(iv) E403 ammonium alginate;

(v) E404 calcium alginate;

(vi) E405 propane 1, 2-diol alginate;

(vii) E406 agar;

(viii) E407 carrageenan;

(ix) E407a processed euchema seaweed;

(x) E410 locust bean gum;

(xi) E412 guar gum;

(xii) E413 tragacanth;

(xiii) E414 acacia gum;

(xiv) E415 xanthan gum;

(xv) E417 tara gum; or

(xvi) E418 gellan gum.

Prohibitions

3.—(1) No person shall carry out any commercial operation with respect to any jelly mini-cups which contain any prohibited additive.

(2) No person shall use any prohibited additive in the manufacture of any jelly mini-cups.

(3) Any person who knowingly contravenes paragraph (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months.

Enforcement

4.—(1) It shall be the duty of each food authority to execute and enforce these Regulations within its area.

(2) For the purposes of the exercise of the duty referred to in paragraph (1), an authorised officer of the food authority concerned shall–

(a) have the same powers as an authorised officer of an enforcement authority under section 32 of the Act for purposes connected with the Act or Regulations or Orders made under the Act; and

(b) be subject to the same obligations as regards the procurement of samples under section 29 of the Act as are imposed on an authorised officer of an enforcement authority by regulations 6 to 8 of the Food Safety (Sampling and Qualifications) Regulations 1990(**3**), with the modification that any reference in those Regulations to section 29 of the Act shall be deemed to be a reference to that section as applied by regulation 6(c) of these Regulations.

(3) Each food authority shall give such assistance and information to the Scottish Ministers and the Food Standards Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

(**3**) S.I.1990/2463, to which there are amendments not relevant to these Regulations.

Inspection and seizure of jelly mini-cups

5.—(1) An authorised officer of a food authority may, for the purpose of enforcing these Regulations, at all reasonable times inspect any jelly mini-cups which–

(a) have been sold or are offered or exposed for sale; or

(b) are in the possession of, or have been deposited with or consigned to, any person for the purpose of sale or of preparation for sale.

(2) Paragraphs (3) to (8) shall apply where, whether or not on an inspection carried out under paragraph (1), it appears to an authorised officer that–

(a) any person has carried out commercial operations with respect to jelly mini-cups which contain a prohibited additive in contravention of regulation 3(1) of these Regulations; or

(b) any person has used a prohibited additive in the manufacture of any jelly mini-cups in contravention of regulation 3(2) of these Regulations.

(3) The authorised officer may either–

(a) give notice to the person in charge of such jelly mini-cups that, until the notice is withdrawn, the jelly mini-cups or any specified quantity of them–

(i) are not to be used for human consumption; and

(ii) either are not to be removed or are not to be removed except to some place specified in the notice; or

(b) seize such jelly mini-cups and remove them in order to have them dealt with by the sheriff,

and any person who knowingly contravenes the requirements of a notice under paragraph (a) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where the authorised officer exercises the powers conferred by paragraph (3)(a) above, that officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not that officer is satisfied that there has been no contravention of regulation 3(1) or (2) of these Regulations and–

(a) if the authorised officer is so satisfied, shall forthwith withdraw the notice; or

(b) if the authorised officer is not so satisfied, shall seize the jelly mini-cups and remove them in order to have them dealt with by the sheriff.

(5) Where an authorised officer exercises the powers conferred by paragraph (3)(b) or (4)(b) above, the authorised officer shall inform the person in charge of the jelly mini-cups of the intention to have them dealt with by the sheriff and any person who under regulation 3(3) of these Regulations might be liable to a prosecution in respect of the jelly mini-cups shall, if that person attends before the sheriff by whom the jelly mini-cups fall to be dealt with, be entitled to be heard and to call witnesses.

(6) If it appears to the sheriff, on the basis of such evidence as the sheriff considers appropriate in the circumstances, that any person has contravened regulation 3(1) or (2) of these Regulations in relation to any jelly mini-cups falling to be dealt with under this section, the sheriff shall condemn the jelly mini-cups and order–

(a) the jelly mini-cups to be destroyed or to be so disposed of as to prevent them from being used for human consumption; and

(b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the jelly mini-cups.

(7) If a notice under paragraph (3)(a) above is withdrawn, or the sheriff by whom any jelly mini-cups fall to be dealt with under this section refuses to condemn them, the food authority shall compensate the owner of the jelly mini-cups for any depreciation in their value resulting from the action taken by the authorised officer.