SCOTTISH STATUTORY INSTRUMENTS

2003 No. 291

FOOD

The Cocoa and Chocolate Products (Scotland) Regulations 2003

Made - - - -	*5th June 2003*
Laid before the Scottish Parliament - - - -	*6th June 2003*
Coming into force - -	*3rd August 2003*

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(e), 17(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990 [F1] and of all other powers enabling them in that behalf, having had regard in accordance with section 48(4A) [F2] of that Act to relevant advice given by the Food Standards Agency, and after consultation in accordance with section 48(4) and (4B) [F3] of that Act, hereby make the following Regulations:

F1 1990 c. 16; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c. 40), **Schedule 9**, paragraph 6 and by the Food Standards Act 1999 (c. 28) ("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 17(1) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, 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.

F2 Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the Food Standards Act 1999.

F3 Section 48(4B) was inserted by paragraph 21 of Schedule 5 to the Food Standards Act 1999.

Citation, commencement and extent

1. These Regulations may be cited as the Cocoa and Chocolate Products (Scotland) Regulations 2003 and shall come into force on 3rd August 2003.

(2) These Regulations shall extend to Scotland only.

Interpretation

2. In these Regulations–

"the Act" means the Food Safety Act 1990;

"catering establishment" means a restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed or mobile stall) where, in the course of a

business, food is prepared for delivery to the ultimate consumer and is ready for consumption without further preparation;

"designated product" means any cocoa or chocolate product specified in column 2 of Schedule 1, as read with any Note to that Schedule and any provision of regulation 3 and Schedule 2 relating to that product; and "designated cocoa product" and "designated chocolate product" mean any such product which is respectively a cocoa product or a chocolate product;

"Directive 2000/36/EC" means Council Directive 2000/36/EC relating to cocoa and chocolate products intended for human consumption [F4];

"EEA Agreement" means the Agreement on the European Economic Area [F5] signed at Oporto on 2nd May 1992 as adjusted by the Protocol [F6] signed at Brussels on 17th March 1993;

"EEA State" means a State which is a Contracting Party to the EEA Agreement;

"other edible substances" does not include vegetable fats referred to in regulation 3 or the filling of any product specified in column 2 of item 7 or of item 10(a) of Schedule 1;

"preparation" includes manufacture and any form of processing or treatment, and "prepared" shall be construed accordingly;

"reserved description", as respects any designated product, means any description specified in relation to that product in column 1 of Schedule 1;

[[F7]"Regulation (EU) No 1169/2011" means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004**][**[F8], as last amended by Regulation (EU) 2015/2283 of the European Parliament and of the Council on novel foods**]**;

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

[F9]...; and

"ultimate consumer" means any person who buys otherwise than–

(a) for the purpose of resale;

(b) for the purposes of a catering establishment; or

(c) for the purposes of a manufacturing business.

F4 O.J. No. L 197, 3.8.00, p.19, as adopted by EEA Joint Committee Decision 152/2001 (O.J. No. L 65, 7.3.02, p.26).

F5 O.J. No. L 1, 3.1.94, p.1.

F6 O.J. No. L 1, 3.1.94, p.571.

F7 Words in reg. 2(1) inserted (13.12.2014) by The Food Information (Scotland) Regulations 2014 (S.S.I. 2014/312), reg. 1(2), **sch. 5 para. 9(a)(ii)**

F8 Words in reg. 2 inserted (28.3.2019) by The Food Standards and Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 (S.S.I. 2019/33), regs. 1(1), **4(2)**

F9 Words in reg. 2(1) omitted (13.12.2014) by virtue of The Food Information (Scotland) Regulations 2014 (S.S.I. 2014/312), reg. 1(2), **sch. 5 para. 9(a)(i)**

Vegetable fats in chocolate products

3.—(1) Subject to paragraph (2) below, the vegetable fats, other than cocoa butter, specified in Schedule 2 may be added to those designated chocolate products specified in column 2 of items 3, 4, 5, 6, 8 and 9 of Schedule 1.

(2) An addition in accordance with paragraph (1) above may not exceed 5 per cent of the finished product, after deduction of the total weight of any other edible substances used in accordance with Note 1 to Schedule 1, without reducing the minimum content of cocoa butter or total dry cocoa solids.

Scope of Regulations

4. These Regulations apply to designated products, which are intended for human consumption and ready for delivery to the ultimate consumer or to a catering establishment.

Reserved descriptions

5. No person shall sell any food with a label, whether or not attached to or printed on the wrapper or container, which bears, comprises or includes any reserved description or any derivative thereof or any word or description substantially similar thereto unless–

(a) such food is the designated product to which the reserved description relates;

(b) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that the substance to which it relates is only an ingredient of that food; F10 …

(c) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that such food is not and does not contain a designated product **[**F11; or **]**

[F12(d) the use of such description, derivative or word to designate the food is in accordance with the customs applicable in the United Kingdom and the food cannot be confused with a product listed in column 1 of Schedule 1.**]**

F10 Word in reg. 5(b) omitted (13.12.2014) by virtue of The Food Information (Scotland) Regulations 2014 (S.S.I. 2014/312), reg. 1(2), **sch. 5 para. 9(b)(i)**

F11 Word in reg. 5(c) substituted (13.12.2014) by The Food Information (Scotland) Regulations 2014 (S.S.I. 2014/312), reg. 1(2), **sch. 5 para. 9(b)(ii)**

F12 Reg. 5(d) inserted (13.12.2014) by The Food Information (Scotland) Regulations 2014 (S.S.I. 2014/312), reg. 1(2), **sch. 5 para. 9(b)(iii)**

Labelling and description of designated products

6.—(1) Without prejudice to the generality of **[**F13Regulation (EU) No 1169/2011**]**, no person shall sell any designated product unless it is marked or labelled with the following particulars:–

(a) subject to paragraphs (2)(a) and (3), a reserved description of the product;

(b) subject to regulation 7(2), in the case of a designated chocolate product which, pursuant to regulation 3, contains vegetable fats other than cocoa butter, the conspicuous and clearly legible statement "contains vegetable fats in addition to cocoa butter";

(c) where the words "milk chocolate" are used as the reserved description or a qualification of the reserved description of a designated chocolate product, an accompanying indication of the dry milk solids content in the form "milk solids: ... % minimum": Provided that–

(i) as regards a designated chocolate product specified in column 2 of item 4(a) of Schedule 1, the dry milk solids content indicated is not less than 14 per cent; and

(ii) as regards a designated chocolate product specified in column 2 of item 5 of Schedule 1, the dry milk solids content indicated is not less than 20 per cent;

(d) subject to paragraph (4) below, in the case of a designated product specified in column 2 of item 2(c), 2(d), 2(e), 3, 4, 5, 8 or 9 of Schedule 1, an indication of the total dry cocoa solids content in the form "cocoa solids... % minimum";

(e) in the case of a designated cocoa product specified in column 2 of item 2(b) or 2(e), an indication of the cocoa butter content.

(2) Where designated chocolate products specified in column 2 of items 3, 4, 5 6, 7 and 10 of Schedule 1 are sold in an assortment–

(a) the reserved description may be replaced by "assorted chocolates" or "assorted filled chocolates" or a similar name; and

(b) the list of ingredients with which food is required by **[**F14Article 9(1)(b) of Regulation (EU) No 1169/2011**]** to be marked or labelled may be a single list of ingredients for all the products in the assortment.

(3) The reserved descriptions "chocolate", "milk chocolate" and "couverture chocolate" may be supplemented by information or descriptions relating to quality criteria:

Provided that the product contains–

(a) in the case of the reserved description "chocolate", not less than 43 per cent total dry cocoa solids, including not less than 26 per cent cocoa butter;

(b) in the case of the reserved description "milk chocolate", not less than 30 per cent total dry cocoa solids and not less than 18 per cent dry milk solids obtained by partly or wholly dehydrating whole milk, semi-skimmed or skimmed milk, cream, or from partly or wholly dehydrated cream, butter or milk fat, including not less than 4.5 per cent milk fat;

(c) in the case of the reserved description "couverture chocolate", not less than 16 per cent dry non-fat cocoa solids.

(4) The total dry cocoa solids content with which a designated product is required by paragraph (1)(d) above to be marked or labelled shall be calculated after deduction of the weight of other edible substances provided for in Note 1 to Schedule 1 but not the weight of any ingredient specified in column 2 of Schedule 1 as an ingredient of that product or of any vegetable fat added in accordance with regulation 3.

F13 Words in reg. 6(1) substituted (13.12.2014) by The Food Information (Scotland) Regulations 2014 (S.S.I. 2014/312), reg. 1(2), **sch. 5 para. 9(c)(i)**

F14 Words in reg. 6(2)(b) substituted (13.12.2014) by The Food Information (Scotland) Regulations 2014 (S.S.I. 2014/312), reg. 1(2), **sch. 5 para. 9(c)(ii)**

Manner of marking or labelling

7.

F15(1) . . . . . .

(2) The information with which a designated chocolate product is required by regulation 6(1)(b) to be marked or labelled shall be–

(a) in the same field of vision as the list of ingredients with which the product is required by **[**F16Article 9(1)(b) of Regulation (EU) No 1169/2011**]** to be marked or labelled;

(b) clearly separated from that list;

(c) in bold lettering of at least the same size as that list; and

(d) located near the reserved description, which may also appear elsewhere on the marking or labelling.

F15 Reg. 7(1) omitted (13.12.2014) by virtue of The Food Information (Scotland) Regulations 2014 (S.S.I. 2014/312), reg. 1(2), **sch. 5 para. 9(d)(i)**

F16 Words in reg. 7(2)(a) substituted (13.12.2014) by The Food Information (Scotland) Regulations 2014 (S.S.I. 2014/312), reg. 1(2), **sch. 5 para. 9(d)(ii)**

Penalties and enforcement

8.—(1) Any person who contravenes or fails to comply with any of the provisions of regulation 5, 6 or 7 of these Regulations shall be guilty of an offence.

(2) A person found guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Each food authority shall enforce and execute these Regulations in its area.

Defence in relation to exports

F17 9. . . . . . .

F17 Reg. 9 revoked (1.1.2006) by The Official Feed and Food Controls (Scotland) Regulations 2005 (S.S.I. 2005/616), reg. 1(b), **sch. 6**

Transitional provision

F18 10. . . . . . .

F18 Reg. 10 omitted (28.3.2019) by virtue of The Food Standards and Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 (S.S.I. 2019/33), regs. 1(1), **4(3)**

Application of various provisions of the Food Safety Act 1990

11. The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof shall be construed for the purposes of these Regulations as a reference to these Regulations:–

(a) section 2 (extended meaning of sale etc.);

(b) section 3 (presumptions that food is intended for human consumption);

(c) section 20 (offences due to fault of another person);

(d) section 21 (defence of due diligence) as it applies for the purposes of section 8, 14 or 15 of the Act;

(e) section 22 (defence of publication in the course of business);

(f) section 30(8) (which relates to documentary evidence);

(g) section 33 (obstruction of officers etc.);

(h) section 35(1) to (3) (punishment of offences) in so far as it relates to offences under section 33(1) or (2) as applied by sub-paragraph (g) above;

(i) section 36 (offences by bodies corporate);

(j) section 36A [F19] (offences by Scottish partnerships); and