WELSH STATUTORY INSTRUMENTS

2010 No. 2922 (W.243)

FOOD, WALES

The Flavourings in Food (Wales) Regulations 2010

Made - - - -	*7 December 2010*
Laid before the National Assembly for Wales - -	*9 December 2010*
Coming into force - -	*20 January 2011*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 17(2), 26(1)(a) and (b) and (3) and 48(1) of the Food Safety Act 1990(**1**) and now vested in them(**2**).

In accordance with section 48(4A) of that Act, they have had regard to relevant advice given by the Food Standards Agency.

As required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(**3**), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title, application and commencement

1. The title of these Regulations is the Flavourings in Food (Wales) Regulations 2010, they apply in relation to Wales and come into force on 20 January 2011.

(**1**) 1990 c. 16. Section 1(1) and (2) (definition of "food") was substituted by S.I.2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c. 28), "the 1999 Act". Section 48 was also amended by S.I. 2004/2990. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c. 40), Schedule 6 to the 1999 Act, S.I. 2004/2990 and S.I. 2004/3279.

(**2**) Functions formerly exercisable by "the Ministers" (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by The National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the 1999 Act and are now vested in the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (2006 c. 32).

(**3**) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Commission Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny — Part Four (OJ No. L188, 18.7.2009, p.14).

Interpretation

2.—(1) In these Regulations—

"the Act" ("*y Ddeddf*") means the Food Safety Act 1990;

"the EU Regulation" ("*y Rheoliad UE*") means Regulation (EC) No. 1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No. 1601/91, Regulations (EC) No. 2232/96 and (EC) No. 110/2008 and Directive 2000/13/EC(**4**);

"authorised officer" ("*swyddog awdurdodedig*") means any person who is authorised in writing, either generally or specifically, by a food authority or as the case may be a port health authority to act in matters arising under these Regulations;

"food authority" ("*awdurdod bwyd*") does not include a port health authority;

"port health authority" ("*awdurdod iechyd porthladd*") means in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984(**5**), a port health authority for that district constituted by order under section 2(4) of that Act.

(2) Any other expression used in these Regulations and in the EU Regulation has the same meaning in these Regulations as it bears in the EU Regulation.

(3) Any reference in regulation 3 to a numbered Article is a reference to the Article so numbered in the EU Regulation.

Offences and penalties

3.—(1) A person who contravenes or fails to comply with any of the EU provisions specified in paragraph (2) as read with the transitional arrangements contained in Article 30 is guilty of an offence.

(2) The EU provisions are—

(a) Article 4 (general conditions of use of flavourings or food ingredients with flavouring properties);

(b) Article 5 (prohibition of non-compliant flavourings or non-compliant food);

(c) Article 6(1) and (2) (restrictions on the presence of certain substances);

(d) Article 7 (restrictions on the use of certain source materials);

(e) Article 10 (restriction relating to the Community list of flavourings and source materials);

(f) Article 14(1) (labelling of flavourings not intended for sale to the final consumer);

(g) Article 17 (labelling of flavourings intended for sale to the final consumer); and

(h) Article 19(2) and (3) (reporting obligations on food business operators).

(3) Anyone convicted of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Enforcement authorities

4. It is the duty of each food authority within its area and each port health authority within its district to execute and enforce these Regulations and the EU Regulation.

(**4**) OJ No. L354, 31.12.2008, p.34.
(**5**) 1984 c. 22.

Application of various sections of the Food Safety Act 1990

5.—(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part of it is to be construed as a reference to these Regulations—

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

(b) section 21 (defence of due diligence)(**6**) with the modification that—

(i) subsections (2) to (4) are to apply in relation to an offence of contravening regulation 3(2)(a) to (g) as they apply in relation to an offence under section 14 or 15, and

(ii) in subsection (4) the references to "sale" are deemed to include references to "placing on the market";

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

(d) section 35(1) (punishment of offences)(**7**), in so far as it relates to offences under section 33(1) as applied by paragraph (3)(b);

(e) section 35(2) and (3)(**8**), in so far as it relates to offences under section 33(2) as applied by paragraph (3)(c);

(f) section 36 (offences by bodies corporate); and

(g) section 36A (offences by Scottish partnerships)(**9**).

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the references in subsection (1) to the Act are to be construed as including references to the EU Regulation.

(3) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act is to be construed as including a reference to the EU Regulation and these Regulations—

(a) section 3 (presumption that food is intended for human consumption) with the modification that the references to "sold" and "sale" are deemed to include references to "placed on the market" and "placing on the market" respectively;

(b) section 33(1) (obstruction etc. of officers);

(c) section 33(2), with the modification that the reference to "any such requirement as is mentioned in subsection (1)(b) above" is deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (b); and

(d) section 44 (protection of officers acting in good faith).

(4) Section 34 of the Act (time limit for prosecutions) applies to offences under regulation 3 as it applies to offences punishable under section 35(2) of the Act.

Condemnation of Food

6. Where any food is certified by a food analyst as being food which it is an offence under these Regulations to place on the market, that food must be treated for the purposes of section 9 of the Act (under which a food may be seized and destroyed under an order of a justice of the peace) as failing to comply with food safety requirements.

(**6**) Section 21 was amended by S.I. 2004/3279.
(**7**) Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c. 44), section 280(2), Schedule 26, paragraph 42, from a date to be appointed.
(**8**) Section 35(3) was amended by S.I. 2004/3279.
(**9**) Section 36A was inserted by the Food Standards Act 1999 (1999 c. 28), section 40(1), Schedule 5, paragraph 16.