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WELSH STATUTORY INSTRUMENTS

2009 No. 1795 (W.162)

FOOD, WALES

The Food Irradiation (Wales) Regulations 2009

Made - - - -	*6 July 2009*
Laid before the National Assembly for Wales - -	*7 July 2009*
Coming into force - -	*31 July2009*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(1) and (3), 17(1), 18(1)(c), 19(1)(b), 6 and 48(1) of, and paragraphs 1 and 4(b) of Schedule 1 to, the Food Safety Act 1990 [F1] which are now vested in them [F2].

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 [F3] there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

F1 1990 c. 16: section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990. Section 17 was amended by paragraph 12, section 19 was amended by paragraph 14 and section 48 was amended by paragraph 21, of Schedule 5 to the Food Standards Act 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 c. 40, **Schedule 6** to the 1999 Act and S.I. 2004/2990.

F2 Functions of "the Ministers" 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 1999/672 as read with section 40(3) of the 1999 Act and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c. 32).

F3 OJ No. L31, 1.2.2002, p.1, as last amended by Commission Regulation (EC) No.202/2008 amending Regulation (EC) No. 178/2002 of the European Parliament and of the Council as regards the number and names of the Scientific Panels of the European Food Safety Authority (OJ No. L60, 5.3.2008, p.17).

Title, commencement and application

1.—(1) The title of these Regulations is the Food Irradiation (Wales) Regulations 2009, and they come into force on 31 July 2009.

(2) These Regulations apply in relation to Wales.

Scope

2. These Regulations do not apply to—

(a) irradiation by measuring or inspection devices at a maximum level of —

(i) 10MeV in the case of X-rays;

(ii) 14MeV in the case of neutrons; or

(iii) 5MeV in other cases,

where the dose of ionising radiation absorbed does not exceed 0.01Gy in the case of inspection devices which utilise neutrons and 0.5 Gy in other cases; or

(b) irradiation of food prepared under medical supervision for patients requiring sterile diets.

Interpretation

3.—(1) In these Regulations—

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

"the Agency" ("*yr Asiantaeth*") means the Food Standards Agency;

"approval" ("*cymeradwyaeth*") includes a licence;

"approved" ("*a gymeradwywyd*", "*wedi'i gymeradwyo*", "*wedi'u cymeradwyo*") includes "licensed" ("*trwyddedig*", "*wedi'i drwyddedu*");

"import" ("*mewnforio*") means to introduce from another Member State or from a country outside the European Community;

"ionising radiation" ("*ymbelydredd ïoneiddio*") means any gamma rays, X-rays or corpuscular radiations which are capable of producing ions either directly or indirectly;

"irradiated" ("*a arbelydrir*", "*a arbelydrwyd*", "*arbelydrwyd*", "*cael ei arbelydru*", "*wedi'i arbelydru*") means treated by ionising radiation, and similar expressions must be construed accordingly;

"licence" ("*trwydded*") save in regulation 7(a)(ii)(bb) means a licence granted by the Agency in accordance with Schedule 2 to a person and a facility to irradiate food and "licensed" ("*ei drwyddedu*", "*trwyddedig*", "*wedi'i drwyddedu*") and "licensee" ("*trwyddedai*") must be construed accordingly;

"official reference number" ("*Rhif cyfeirnod swyddogol*") in relation to a facility in a Member State means the reference number allocated by the Member State in connection with its approval as an irradiation facility (being the number shown for it in the list in Schedule 3);

"sell" ("*gwerthu*") includes possess, offer, expose and advertise for sale, and "sale" ("*gwerthu*") must be construed accordingly.

(2) For the purposes of these Regulations—

(a) "properly irradiated food" ("*bwyd a arbelydrwyd yn briodol*") means food which—

(i) was either irradiated alone or as part of a batch of food in which each item was food which fell within the same permitted category of food; and

(ii) has not been over-irradiated,

and "proper irradiation" ("*arbelydru priodol*") must be construed accordingly;

(b) food falls within a permitted category of food when (excluding the weight of any added water) no less than 98 per cent of it by weight falls within that category, and

"item" ("eitem"), in relation to a batch of food, means each item within that batch intended to be capable of being sold individually;

(c) the permitted categories of food are—

(i) fruit;

(ii) vegetables;

(iii) cereals;

(iv) bulbs and tubers;

(v) dried aromatic herbs, spices and vegetable seasonings;

(vi) fish and shellfish; and

(vii) poultry;

(d) in the permitted categories of food—

(i) "fruit" ("*ffrwythau*") includes but is not limited to fungi, tomatoes and rhubarb;

(ii) "vegetables" ("*llysiau*") excludes fruit, cereals, bulbs and tubers and dried aromatic herbs, spices and vegetable seasonings but includes pulses;

(iii) "bulbs and tubers" ("*bylbiau a chloron*") means potatoes, yams, onions, shallots and garlic;

(iv) "fish and shellfish" ("*pysgod a physgod cregyn*") includes but is not limited to eels, crustaceans and molluscs; and

(v) "poultry" ("*dofednod*") means domestic fowls, geese, ducks, guinea fowls, pigeons, quails and turkeys;

(e) food has been over-irradiated either when the overall average dose of ionising radiation absorbed by it, measured in accordance with Schedule 1, exceeds, in the case of—

(i) fruit, 2 kGy;

(ii) vegetables, 1 kGy;

(iii) cereals, 1 kGy;

(iv) bulbs and tubers, 0.2 kGy;

(v) dried aromatic herbs, spices and vegetable seasonings, 10 kGy;

(vi) fish and shellfish, 3 kGy; or

(vii) poultry, 7 kGy,

or where one of the circumstances described in paragraph (3) applies.

(3) The circumstances are that the maximum dose of ionising radiation absorbed by the food, or by any food in the same batch, measured in accordance with Schedule 1, is—

(a) more than three times the minimum dose absorbed by it; or

(b) more than 1.5 times the overall average dose specified for the food in paragraph (2)(e).

Prohibition on treatment without a licence

4.—(1) No person may in the preparation of any food irradiate it or any part of it unless—

(a) that person has been licensed;

(b) it is in a suitably wholesome state; and

(c) it is irradiated in accordance with these Regulations and any conditions of the licence.

(2) Schedule has effect in relation to licences.

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Restrictions on importation

5.—(1) No person may import any irradiated food into Wales for the purpose of sale unless—

(a) it falls within a permitted category of food;

(b) it has been irradiated in one of the facilities listed in the Table in—

(i) Schedule 3, being in each case a facility in a Member State approved for the irradiation of foods and food ingredients by the Member State concerned; or

(ii) Schedule 4, being in each case a facility in a country outside the European Community and approved by the Community;

(c) it is properly irradiated food; and

(d) where it was irradiated in another Member State, it is accompanied by documents containing—

(i) either the name and address of the facility which carried out the irradiation, or its official reference number; and

(ii) the information specified in paragraph 9(1)(a) to (d) and ( )(d) of Part 3 of Schedule ; or

(e) where it was irradiated outside the European Community—

(i) it is accompanied by documents—

(aa) showing the name and address of the facility in which the food was irradiated; and

(bb) containing the information specified in paragraph 9(1) of Part 3 of Schedule 2;

(ii) in the case of food other than dried aromatic herbs, spices or vegetable seasonings—

(aa) it was irradiated by a person approved, under a reference by which the approval can be identified, by a competent authority in the country in which it was irradiated;

(bb) the approval requires the method of measurement specified in Schedule 1 relating to food to which the approval relates; and

(cc) the operation of the legislation in force in that country relating to the irradiation of food protects human health to an extent not less than human health is protected by the operation of these Regulations; and

(iii) it complies with the conditions which apply to the food.

(2) This regulation applies to food which has (as well as food which has not) become an ingredient of other food.

(3) In paragraph (1)(e)(iii) the expression "the conditions which apply to the food" is to be construed in accordance with the expression "the conditions which apply to the foodstuffs" in Article 9(1) of Directive 1999/2/EC of the European Parliament and of the Council on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation [F4].

F4 OJ No. L66, 13.3.1999, p.16, as amended by Regulation (EC) No. 1882/2003 (OJ No. L284, 31.10.2003, p.1).

Restriction on storage or transport

6.—(1) No person may store or transport any irradiated food for the purpose of sale unless—

(a) that person has been licensed in relation to the food; or

(b) that person has not been licensed in relation to the food and—

(i) where the food has been imported into Wales, it is accompanied by the documents, or copies of the documents, required in relation to it by regulation 5(1)(d) or (e)(i); or

(ii) where the irradiation took place in the United Kingdom, it is accompanied by documents containing a statement that the food has been irradiated and a document or copy containing the information specified in paragraph 9(1)(a) to (d) and (2) of Part 3 of Schedule 2.

(2) This regulation applies to food which has (as well as food which has not) become an ingredient of other food.

Restriction on sale

7. No person may sell food which or any part of which has been irradiated unless—

(a) either—

(i) the irradiation took place in Wales and regulation 4 and Schedule 2 and any conditions of the licence were complied with; or

(ii) the irradiation took place in England, Northern Ireland, or Scotland and

(aa) provisions having effect there, corresponding to regulation 4 and Schedule 2; and

(bb) any conditions of a licence to irradiate food issued there,

were complied with; or

(iii) the food was imported into Wales and regulation 5 was complied with; and

(b) where it was stored or transported, regulation 6 was complied with.

Documentation for food not ready for a final sale

8.—(1) No person may import into Wales, store or transport for the purpose of sale or sell irradiated food, or food containing an irradiated ingredient, which is not ready for delivery to the ultimate consumer or catering establishments unless the documents which accompany the food—

(a) apply the word "irradiated" or the words "treated with ionising radiation" to the food or the ingredient, as the case may be; and

(b) include either the name and address of the facility where the irradiation was carried out, or its official reference number.

(2) In this regulation—

(a) "catering establishment" ("*sefydliad arlwyo*") means a restaurant, canteen, café, 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;

(b) "ultimate consumer" ("*defnyddiwr olaf*") means any person who buys otherwise than—

(i) for the purpose of resale;

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

(iii) for the purposes of a manufacturing business.