WELSH STATUTORY INSTRUMENTS

2008 No. 2602 (W.228)

FOOD, WALES

The Infant Formula and Follow-on Formula (Amendment) (Wales) Regulations 2008

Made - - - -	*1 October 2008*
Laid before the National Assembly for Wales - -	*6 October 2008*
Coming into force - -	*29 October 2008*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(e), 17(1), 26(1)(a) 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 the Food Safety Act 1990, the Welsh Ministers 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 and commencement

1. These Regulations—

(a) may be cited as the Infant Formula and Follow-on Formula (Amendment) (Wales) Regulations 2008; and

(b) come into force on 29 October 2008.

(**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 and S.I. 2004/2990.

(**2**) Functions of 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). Those Functions were transferred to Welsh Ministers by section 162 and Schedule 11, paragraph 30 of the Government of Wales Act 2006 (c. 32).

(**3**) 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).

Amendment of the Infant Formula and Follow-on Formula (Wales) Regulations 2007

2.—(1) The Infant Formula and Follow-on Formula (Wales) Regulations 2007(**4**) are amended in accordance with the following paragraphs.

(2) For the provisions of regulation 3 (prohibition on the marketing of infant formula or follow-on formula unless certain conditions are met) there are substituted the following provisions—

"(1) No person may market infant formula which contravenes or fails to comply with regulation 5, 6, 8, 10, 11, 12, 14(1), (2) or (3), 15, 17, 19 or 20(1).

(2) No person may market follow-on formula which contravenes or fails to comply with regulation 5, 7, 9, 10, 11, 12, 14(1), (2) or (3), 16, 18, 19 or 20(2).".

(3) For paragraphs (1) and (2) of regulation 20 (presentation (infant formula and follow-on formula)) there are substituted the following paragraphs—

"(1) The presentation of an infant formula must comply with the provisions of regulations 17(1)(e), (2), (3) and (4) and 19.

(2) The presentation of a follow-on formula must comply with the provisions of regulations 18(2) and 19.".

(4) For sub-paragraph (a) of paragraph (1) of regulation 26 (export of infant formula to third countries) there is substituted the following sub-paragraph—

"(a) regulation 5, 6, 8, 10, 11, 12, 14(1), (2) or (3), 17, 19 or 20(1);".

(5) For paragraph (a) of regulation 27 (export of follow-on formula to third countries) there is substituted the following paragraph—

"(a) regulation 5, 7, 9, 10, 11, 12, 14(1), (2) or (3), 18, 19 or 20(2);".

(6) For paragraph (3) of regulation 31 (revocation and transitional arrangements) there is substituted the following paragraph—

"(3) In respect of any contravention or failure to comply before 1 January 2010, no person commits an offence under regulation 28(1) consisting of a contravention of or a failure to comply with—

(a) regulation 3(1), where—

(i) the action that would otherwise constitute the offence consists of marketing infant formula which contravenes or fails to comply with regulation 5, 6, 8, 10, 11, 12 or 14 (1), (2) or (3), and

(ii) that action does not constitute an offence under regulation 22(1) of the 1995 Regulations consisting of a contravention of or a failure to comply with regulation 2(a)(i) or (ii) of those Regulations;

(b) regulation 3(1), where—

(i) the action that would otherwise constitute the offence consists of marketing infant formula which contravenes or fails to comply with regulation 17 or 19, and

(ii) that action, had it taken place on 10 January 2008, would not have constituted an offence under regulation 22(1) of the 1995 Regulations as they then stood consisting of a contravention of or a failure to comply with regulation 2(a)(iii) of those Regulations;

(c) regulation 3(1), where—

(i) that action would otherwise constitute the offence consists of marketing infant formula which contravenes or fails to comply with regulation 20(1)

(**4**) S.I. 2007/3573 (W.316).