WELSH STATUTORY INSTRUMENTS

2006 No. 1851 (W.194)

FOOD, WALES

The Kava-kava in Food (Wales) Regulations 2006

Made - - - -	*11 July 2006*
Coming into force - -	*14 July 2006*

The National Assembly for Wales, in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 18(1)(c), 26(1) and (3) and 48(1) of the Food Safety Act 1990(**1**) and now vested in it(**2**), and having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency, and after consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council(**3**), hereby makes the following Regulations:

Title, commencement and application

1. These Regulations—

(a) are called the Kava-kava in Food (Wales) Regulations 2006;

(b) come into force on 14 July 2006;

(c) apply in relation to Wales.

Interpretation

2. In these Regulations—

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

"EEA State" ("*Gwladwriaeth AEE*") means a member State, Norway, Iceland or Liechtenstein;

"food authority" ("*awdurdod bwyd*") has the same meaning as in section 5(1A) and (3)(a) and (b) of the Act;

"free circulation in member States" ("*cylchrediad rhydd mewn Aelod-wladwriaethau*") has the same meaning as in Article 23.2, as read with Article 24, of the Treaty establishing the European Community;

(**1**) 1990 c. 16. S.I.2004/2990 amended the definition of "food" in section 1 of the Act and amended the consultation requirements in section 48 of the Act in order to meet the requirements of Regulation (EC) No.178/2002.

(**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), as read with section 40(3) of the 1999 Act.

(**3**) OJ No. L31, 1.2.2002, p.1; 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.

"Kava-kava" ("*Cafa-cafa*") means a plant, or any part of or an extract from a plant, belonging to the species Piper methysticum;

"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(**4**), a port health authority for that district constituted by order under section 2(4) of that Act.

Prohibition on sale etc. of food consisting of or containing Kava-kava

3.—(1) Subject to paragraph (2), no person shall—

(a) sell, or

(b) possess for sale or offer, expose or advertise for sale, or

(c) import into Wales from a country outside the United Kingdom or transport into Wales from any other part of the United Kingdom any food consisting of or containing Kava-kava.

(2) The prohibition imposed by paragraph (1) does not apply where the food consisting of or containing Kava-kava is imported from an EEA State, if the food—

(a) originates in an EEA State, or

(b) originates outside the European Economic Area, but is in free circulation in member States,

and is being, or is to be exported to an EEA State other than the United Kingdom.

Penalty and enforcement

4.—(1) Any person who contravenes or fails to comply with regulation 3 is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Subject to paragraph (3), each food authority shall enforce within its area the provisions of these Regulations.

(3) Each port health authority enforces within its district the provisions of these Regulations.

Application of various provisions 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 thereof are construed for the purposes of these Regulations as a reference to these Regulations—

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

(b) section 3 (presumption that food 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 sections 14 or 15 of the Act;

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

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

(g) section 33(1) (obstruction etc of officers);

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

(**4**) 1984 c. 22