WELSH STATUTORY INSTRUMENTS

2005 No. 1350 (W.98)

FOOD, WALES

The Smoke Flavourings (Wales) Regulations 2005

Made - - - - 17 May 2005

Coming into force in accordance with regulation 1

The National Assembly, in exercise of the powers conferred by sections 16(1)(a), (c), (e) and (f), 17(2), 26(1) and (3) and 48(1) of, and paragraph 1 of Schedule 1 to, 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 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**) makes the following Regulations:

Title, commencement and application

1. These Regulations —

(a) may be cited as the Smoke Flavourings (Wales) Regulations 2005;

(b) come into force —

(i) in the case of regulation 3 and regulations 1 and 2 in so far as they relate to regulation 3, on 27 May 2005;

(ii) otherwise, on 16 June 2005;

(c) apply in relation to Wales.

Interpretation

2.—(1) In these Regulations —

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

(**1**) 1990 c. 16.

(**2**) Functions of the Secretary of State under the Food Safety Act 1990, 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).

(**3**) OJ No. L31, 1.2. 2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4). By virtue of regulation 5 of the Food Safety Act 1990 (Amendment) Regulations 2004 (S.I. No. 2004/2990), with effect from 7 December 2004 the consultation requirement contained in section 48(4) of the 1990 Act is disapplied in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.

"Regulation 2065/2003" ("*Rheoliad 2065/2003*") means Regulation (EC) No. 2065/2003 of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods(**4**);

"specified Community provision" ("*darpariaeth Gymunedol benodedig*") means a provision of Regulation 2065/2003 specified in column 1 and described in column 2 of the Schedule to these Regulations.

(2) Other expressions used in these Regulations and in Regulation 2065/2003 have the same meanings in these Regulations as in Regulation 2065/2003 and in these Regulations any reference to a numbered article or annex is a reference to the article or annex so numbered in Regulation 2065/2003.

Administration of Regulation 2065/2003

3. The national competent authority for the purposes of Article 7 of Regulation 2065/2003 (application for authorisation) is the Food Standards Agency(**5**).

Condemnation of food

4.—(1) Where, in relation to any food, a contravention of any of Articles 4.2, 5.1, 5.2, 9.4, or 9.5 has occurred —

(a) that food is to be treated for the purposes of section 9 of the Act as failing to comply with the food safety requirements; and

(b) if that food is part of a batch, lot or consignment of food of the same class or description it is to be presumed, until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

(2) For the purposes of this regulation "food" includes any primary smoke condensate, primary tar fraction or derived smoke flavouring.

Offences and penalties

5. Any person who contravenes or fails to comply with any of the specified Community provisions contained in the Schedule to these Regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Application of various provisions of the Food Safety Act 1990

6. The following provisions of the Act apply for the purposes of these Regulations and Regulation 2065/2003 as they apply for the purposes of the Act —

(a) section 3 (presumption that food is intended for human consumption);

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

(c) section 21 (defence of due diligence) as it applies for the purposes of sections 14 or 15 of that Act);

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

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

(f) section 33(1) (obstruction, etc. of officers);

(**4**) OJ No. L309, 26.11.2003, p.1.
(**5**) Whose address in Wales is 11th Floor, Southgate House, Wood Street, Cardiff CF10 1EW.