WELSH STATUTORY INSTRUMENTS

2004 No. 314 (W.32)

FOOD, WALES

The Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Wales) Regulations 2004

Made - - - -	*10th February 2004*
Coming into force - -	*6th March 2005*

The National Assembly for Wales, in exercise of the powers conferred by sections 6(4), 16(1)(a), (e) and (f), 17(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990 [F1] and now vested in it [F2], having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency and after consultation both as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council [F3] 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 and in accordance with section 48(4) and (4B) of that Act, makes the following Regulations:

F1 1990 c. 16.

F2 Functions formerly exercisable by "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 Food Standards Act 1999 (1999 c. 28).

F3 OJ No. L31, 1.2.2002, p.1.

Title, application and commencement

1. These Regulations may be cited as the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Wales) Regulations 2004; they apply in relation to Wales only and come into force on 6th March 2005.

Interpretation

2.—(1) In these Regulations —

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

"baby foods" ("*bwyd babanod*") means foods for particular nutritional use fulfilling the particular requirements of infants and young children in good health and intended for use by infants while they are being weaned, and by young children as a supplement to their diet or for their progressive adaptation to ordinary food, but excludes processed cereal-based foods;

[F4"the Directive" ("*y Gyfarwyddeb*") means Commission Directive 2006/125/EC on processed cereal-based foods and baby foods for infants and young children;**]**

F5…

"food authority" ("*awdurdod bwyd*") has the same meaning as in section 5(1A) and (3) of the Act sofar as subsection 3 can apply to Wales;

"infants" ("*babanod*") means children under the age of twelve months;

"pesticide residue" ("*gweddill plaleiddiad*") means the residue in processed cereal-based foods or baby foods of a plant protection product **[**F6which has the same meaning as in Article 2(1) of Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC, and "residue" shall be read in accordance with Article 3(1) of that Regulation**]**, including its metabolites and products resulting from its degradation or reaction;

"processed cereal-based foods" ("*bwydydd proses sydd wedi'u seilio ar rawn*") means foods for particular nutritional use within the categories specified in Part I of Schedule 1 fulfilling the particular requirements of infants and young children in good health and intended for use by infants while they are being weaned, and by young children as a supplement to their diet or for their progressive adaptation to ordinary food;

"sell" ("*gwerthu*") includes possess for sale and offer, expose or advertise for sale **[**F7, and "sold" ("*cael ei werthu*") is to be construed accordingly**]**; and

"young children" ("*plant ifanc*") means children aged between one and three years.

(2) Other expressions used in these Regulations and in the Directive have the same meaning in these Regulations as they have in the Directive.

(3) Where any Schedule contains any note, the provisions of that Schedule shall be interpreted and applied in accordance with such note.

F4 Words in reg. 2(1) substituted (15.10.2007) by The Food for Particular Nutritional Uses (Miscellaneous Amendments) (Wales) Regulations 2007 (S.I. 2007/2753), regs. 1, **6(2)**

F5 Words in reg. 2(1) omitted (26.7.2018) by virtue of The Food and Feed (Miscellaneous Amendments and Revocations) (Wales) Regulations 2018 (S.I. 2018/806), regs. 1(3), **9**

F6 Words in reg. 2 substituted (24.9.2011) by The Plant Protection Products Regulations 2011 (S.I. 2011/2131), reg. 1(1), **Sch. 4** (with reg. 29)

F7 Words in reg. 2(1) inserted (2.8.2016) by The Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016 (S.I. 2016/639), reg. 1(3), **Sch. 3 para. 3(a)**

Exemption

3. These Regulations shall not apply to any baby food which is a milk intended for young children.

Restrictions on the sale of processed cereal-based foods and baby foods

4. No person shall sell any processed cereal-based food or baby food unless —

(a) it complies with the requirements of regulations 5 to 7 as to manufacture and composition; and

(b) it is labelled in accordance with regulation 8.

General requirements as to manufacture and composition

5.—(1) No processed cereal-based food or baby food shall be manufactured from any ingredient other than those whose suitability for particular nutritional use by infants and young children has been established by generally accepted scientific data.

(2) No processed cereal-based food or baby food shall contain any substance in such quantity as to endanger the health of infants or young children.

(3) The composition of a processed cereal-based food shall comply with the criteria specified in Part II of Schedule 1 as read with Schedule 2.

(4) The composition of a baby food shall comply with the criteria specified in Schedule 3.

Added nutritional substances and nutrients

6.—(1) In the manufacture of any processed cereal-based food or baby food, no nutritional substance shall be added other than a nutritional substance specified in Schedule 4.

(2) No processed cereal-based food or baby food shall contain any added nutrient specified in column 1 of Part I of Schedule 5 in an amount exceeding the maximum limit specified opposite that nutrient in column 2 of that Part.

(3) No processed cereal-based food or baby food specified in column 1 of Part II of Schedule 5 shall contain any added nutrient specified opposite that food in column 2 of that Part in an amount exceeding the maximum limit specified opposite that food in column 3 of that Part.

Pesticide residues

7.—(1) No processed cereal-based food or baby food shall contain —

(a) any pesticide residue of a pesticide specified in Schedule 6; or

(b) any omethoate, where it is a metabolite of a pesticide not specified in Schedule 6, or any product resulting from degradation or reaction of that metabolite,

at a level exceeding 0.003 mg/kg.

(2) No processed cereal-based food or baby food shall contain any pesticide residue of a pesticide specified in column 1 of Schedule 7 at a level exceeding that specified in column 2 of that Schedule in relation to that pesticide.

(3) No processed cereal-based food or baby food shall contain any pesticide residue of any individual pesticide which is not specified in Schedule 6 or column 1 of Schedule 7 at a level exceeding 0.01 mg/kg.

(4) The levels referred to in paragraphs (1) to (3) apply to the processed cereal-based food or baby food —

(a) manufactured as ready for consumption, or

(b) if it is not so manufactured, as reconstituted according to its manufacturer's instructions.

(5) Analytical methods for determining levels of pesticide residues for the purposes of this regulation shall be generally acceptable standardised methods.

Labelling

8.—(1) Without prejudice to the generality of **[**[F8]Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers**]**, processed cereal-based foods and baby foods shall be labelled with the following particulars —

(a) a statement as to the appropriate age (which shall be not less than four months) from which the food may be used, regard being had to its composition, texture or other particular properties;

(b) information as to the presence or absence of gluten if the age stated pursuant to sub-paragraph (a) is less than six months;

(c) the available energy value expressed in kJ and kcal, and the protein, carbohydrate and fat content, expressed in numerical form, per 100 g or 100 ml of the food as sold and, where appropriate, per specified quantity of the food as proposed for consumption;

(d) the average quantity, expressed in numerical form, per 100 g or 100 ml of the food as sold and, where appropriate, per specified quantity of the food as proposed for consumption, of each mineral substance and of each vitamin in respect of which a maximum or a minimum compositional requirement is specified in —

(i) Part II of Schedule 1 in the case of processed cereal-based foods; and

(ii) Schedule 3 in the case of baby foods; and

(e) if preparation of the food is necessary, appropriate instructions for preparation and a statement as to the importance of following those instructions.

(2) Subject to paragraph (1)(d), no processed cereal-based food or baby food shall be labelled with the average quantity of any nutrient specified in Schedule 4 unless —

(a) that average quantity is expressed in numerical form, per 100 g or 100 ml of the food as sold and, where appropriate, per specified quantity of the food as proposed for consumption; and

(b) in the case of a mineral substance or vitamin, it is a mineral substance or vitamin other than one referred to in paragraph (1)(d).

(3) Where, pursuant to paragraph (1)(d) or paragraph (2), any processed cereal-based food or baby food is labelled with the average quantity, per 100 g or 100 ml of the food as sold and, where appropriate, per specified quantity of the food as proposed for consumption, of any vitamin or mineral which is specified in column 1 of Schedule 8, the labelling of the food shall not express that average quantity as a percentage of the reference value specified in column 2 of Schedule 8 in relation to that vitamin or mineral unless the quantity present is equal to 15 per cent or more of the reference value.

F8 Words in reg. 8(1) substituted (13.12.2014) by The Food Information (Wales) Regulations 2014 (S.I. 2014/2303), reg. 1(3), **Sch. 7 para. 39**

Enforcement

9.—(1) Except where paragraph (2) applies, each food authority shall enforce and execute these Regulations in its area.

(2) Each port health authority shall enforce and execute these Regulations in its district in relation to imported food.

Offence and penalty

10. If any person contravenes regulation 4 he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

[F9Application of the improvement notice provisions of the Act

10A.—(1) Section 10(1) and (2) of the Act (improvement notices) applies, with the modification (in the case of section 10(1)) specified in Part 1 of Schedule 9, for the purposes of—

(a) enabling an improvement notice to be served on a person requiring the person to secure compliance with any of the requirements specified in regulation 4; and

(b) making the failure to comply with a notice referred to in subparagraph (a) an offence.

(2) Section 32(1) to (8) of the Act (powers of entry) applies, with the modification (in the case of section 32(1)) specified in Part 2 of Schedule 9, for the purposes of enabling an authorised officer of an enforcement authority—

(a) to exercise a power of entry to ascertain whether food that does not comply with one or more of the requirements specified in regulation 4 is, or has been, sold; and

(b) to exercise a power of entry to ascertain whether there is any evidence of any contravention of regulation 4.

(3) Section 35 of the Act (punishment of offences) applies, with the modification specified in Part 3 of Schedule 9, for the purpose of specifying the punishment of an offence committed under paragraph (1)(b).

(4) Section 37(1), (3), (5) and (6) of the Act (appeals) applies, with the modification (in the case of section 37(1), (5) and (6)) specified in Part 4 of Schedule 9, for the purpose of enabling a decision to serve a notice referred to in paragraph (1)(a) to be appealed.

(5) Section 39 of the Act (appeals against improvement notices) applies, with the modification (in the case of section 39(3)) specified in Part 5 of Schedule 9, for the purpose of dealing with appeals against a decision to serve a notice referred to in paragraph (1)(a).**]**

F9 Reg. 10A inserted (2.8.2016) by The Food for Specific Groups (Information and Compositional Requirements) (Wales) Regulations 2016 (S.I. 2016/639), reg. 1(3), **Sch. 3 para. 3(b)**

Defence in relation to exports

F10 11. . . . . . .

F10 Reg. 11 revoked (1.1.2006) by The Official Feed and Food Controls (Wales) Regulations 2005 (S.I. 2005/3254), reg. 1, **Sch. 6 Pt. 2**

Application of various provisions of the Act

12. The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof shall be construed as a reference to these Regulations —

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

(b) section 3 (presumptions that food is 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 section 8, 14 or 15;

(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);