WELSH STATUTORY INSTRUMENTS

2003 No. 3037 (W.285)

FOOD, WALES

The Cocoa and Chocolate Products (Wales) Regulations 2003

Made - - - -	*26th November 2003*
Coming into force - -	*28th November 2003*

The National Assembly for Wales, in exercise of the powers conferred by sections 16(1)(e), 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, hereby makes the following Regulations:

F1 1990 c. 16.

F2 Functions formerly exercisable by 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).

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

Title, commencement and application

1. These Regulations may be cited as the Cocoa and Chocolate Products (Wales) Regulations 2003, shall come into force on 28th November 2003 and shall apply to Wales only.

Interpretation

2.—(1) In these Regulations —

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

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

"designated product" ("*cynnyrch dynodedig*") means any cocoa or chocolate product specified in column 2 of Schedule 1, as read with any Note to that Schedule and any provision of regulation 3 and Schedule 2 relating to that product; and "designated chocolate

product" ("*cynnyrch siocled dynodedig*") and "designated cocoa product" ("*chynnyrch coco dynodedig*") mean any such product which is respectively a chocolate product or a cocoa product;

F4 …

"food authority" ("*awdurdod bwyd*") has the same meaning as in section 5(1A) and (3)(a) and (b) of the Food Safety Act 1990;

F5 …

"other edible substances" ("*sylweddau bwytadwy eraill*") does not include vegetable fats referred to in regulation 3 or the filling of any product specified in column 2 of item 7 or of item 10(a) of Schedule 1;

"preparation" ("*paratoi*") includes manufacture and any form of processing or treatment;

[F6"Regulation (EU) No 1169/2011" ("*Rheoliad (EU) Rhif 1169/2011*") means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004F7;**]**

"reserved description" ("*disgrifiad neilltuedig*"), as respects any designated product, means any description specified in relation to that product in column 1 of Schedule 1;

"sell" ("*gwerthu*") includes offer or expose for sale or have in possession for sale, and "sale" ("*gwerthiant*") shall be construed accordingly; and

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

(a) for the purpose of resale,

(b) for the purposes of a catering establishment, or

(c) for the purposes of a manufacturing business.

(2) Any reference in these Regulations to a numbered regulation or Schedule shall be construed as a reference to the regulation or Schedule bearing that number in these Regulations.

F4 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), **7(2)**

F5 Words in reg. 2(1) omitted (13.12.2014) by virtue of The Food Information (Wales) Regulations 2014 (S.I. 2014/2303), reg. 1(3), **Sch. 7 para. 29(a)**

F6 Words in reg. 2(1) inserted (13.12.2014) by The Food Information (Wales) Regulations 2014 (S.I. 2014/2303), reg. 1(3), **Sch. 7 para. 29(b)**

F7 OJ No L 304, 22.11.2011, p 18, last amended by Commission Delegated Regulation (EU) No 78/2014 (OJ No L 27, 30.1.2014, p 7).

Vegetable fats in chocolate products

3.—(1) Subject to paragraph (2) below, the vegetable fats, other than cocoa butter, specified in Schedule 2 may be added to those designated chocolate products specified in column 2 of items 3, 4, 5, 6, 8 and 9 of Schedule 1.

(2) An addition in accordance with paragraph (1) may not exceed 5 per cent of the finished product, after deduction of the total weight of any other edible substances used in accordance with the Note 1 to Schedule 1, without reducing the minimum content of cocoa butter or total dry cocoa solids.

Scope of Regulations

4. These Regulations apply to designated products intended for human consumption and ready for delivery to the ultimate consumer or to a catering establishment.

Reserved descriptions

5. No person shall sell any food with a label, whether or not attached to or printed on the wrapper or container, which bears, comprises or includes any reserved description or any derivative thereof or any word or description substantially similar thereto unless —

(a) such food is the designated product to which the reserved description relates;

[F8(b) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that the substance to which it relates is only an ingredient of that food;

(c) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that such food is not and does not contain a designated product; or

(d) the use of such description, derivative or word to designate the food is in accordance with the customs applicable in the United Kingdom and the food cannot be confused with a product listed in column 1 of Schedule 1.**]**

F8 Reg. 5(b)-(d) substituted for reg. 5(b)(c) (13.12.2014) by The Food Information (Wales) Regulations 2014 (S.I. 2014/2303), reg. 1(3), **Sch. 7 para. 30**

Labelling and description of designated products

6.—(1) Without prejudice to the generality of **[**F9Regulation (EU) No 1169/2011**]**, no person shall sell any designated product unless it is marked or labelled with the following particulars —

(a) subject to paragraphs (2)(a) and (3) below, a reserved description of the product;

(b) subject to paragraph (2) of regulation 7, in the case of a designated chocolate product which, pursuant to regulation 3, contains vegetable fats other than cocoa butter, the conspicuous and clearly legible statement "contains vegetable fats in addition to cocoa butter";

(c) where the words "milk chocolate" are used as the reserved description or a qualification of the reserved description of a designated chocolate product, an accompanying indication of the dry milk solids content in the form "milk solids: ... % minimum", provided that —

(i) as regards a designated chocolate product specified in column 2 of item 4(a) of Schedule 1, the dry milk solids content indicated is not less than 14 per cent; and

(ii) as regards a designated chocolate product specified in column 2 of item 5 of Schedule 1, the dry milk solids content indicated is not less than 20 per cent;

(d) subject to paragraph (4) below, in the case of a designated product specified in column 2 of item 2(c), 2(d), 2(e), 3, 4, 5, 8 or 9 of Schedule 1, an indication of the total dry cocoa solids content in the form "cocoa solids... % minimum";

(e) in the case of a designated cocoa product specified in column 2 of item 2(b) or 2(e), an indication of the cocoa butter content.

(2) Where designated chocolate products specified in column 2 of items 3, 4, 5, 6, 7 and 10 of Schedule 1 are sold in an assortment —

(a) the reserved description may be replaced by "assorted chocolates" or "assorted filled chocolates" or a similar name; and

(b) the list of ingredients with which food is required by **[**F10Article 9(1)(b) of Regulation (EU) No 1169/2011**]** to be marked or labelled may be a single list of ingredients for all the products in the assortment.

(3) The reserved descriptions "chocolate", "milk chocolate" and "couverture chocolate" may be supplemented by information or descriptions relating to quality criteria provided that the product contains —

(a) in the case of the reserved description "chocolate", not less than 43 per cent total dry cocoa solids, including not less than 26 per cent cocoa butter;

(b) in the case of the reserved description "milk chocolate", not less than 30 per cent total dry cocoa solids and not less than 18 per cent dry milk solids obtained by partly or wholly dehydrating whole milk, semi-skimmed or skimmed milk, cream, or from partly or wholly dehydrated cream, butter or milk fat, including not less than 4.5 per cent milk fat;

(c) in the case of the reserved description "couverture chocolate", not less than 16 per cent dry non-fat cocoa solids.

(4) The total dry cocoa solids content with which a designated product is required by paragraph (1)(d) above to be marked or labelled shall be calculated after deduction of the weight of other edible substances provided for in Note 1 to Schedule 1 but not the weight of any ingredient specified in column 2 of Schedule 1 as an ingredient of that product or of any vegetable fat added in accordance with regulation 3.

F9 Words in reg. 6(1) substituted (13.12.2014) by The Food Information (Wales) Regulations 2014 (S.I. 2014/2303), reg. 1(3), **Sch. 7 para. 31(a)**

F10 Words in reg. 6(2)(b) substituted (13.12.2014) by The Food Information (Wales) Regulations 2014 (S.I. 2014/2303), reg. 1(3), **Sch. 7 para. 31(b)**

Manner of marking or labelling

7.—F11(1) . . . . . .

(2) The information with which a designated chocolate product is required to be marked or labelled by paragraph (1)(b) of regulation 6 shall be —

(a) in the same field of vision as the list of ingredients with which the product is required by **[**F12Article 9(1)(b) of Regulation (EU) No 1169/2011**]**F13 to be marked or labelled;

(b) clearly separated from that list;

(c) in bold lettering no less large than that of the list; and

(d) located near the reserved description, which may also appear elsewhere on the marking or labelling.

F11 Reg. 7(1) revoked (13.12.2014) by The Food Information (Wales) Regulations 2014 (S.I. 2014/2303), **Sch. 6 Pt. 1**

F12 Words in reg. 7(2)(a) substituted (26.7.2018) by The Food and Feed (Miscellaneous Amendments and Revocations) (Wales) Regulations 2018 (S.I. 2018/806), regs. 1(3), **7(3)**

F13 OJ No L 304, 22.11.2011, p. 18, as last amended by Regulation (EU) 2015/2283 of the European Parliament and of the Council (OJ No L 327, 11.12.2015, p. 1) and as corrected by the Corrigenda set out in OJ No L 247, 13.9.2012, p. 17 and OJ No L 266, 30.9.2016, p. 7.

Penalties and enforcement

8.—(1) Any person who contravenes or fails to comply with any provision of regulation 5 or 6 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Each food authority shall enforce and execute these Regulations in its area.

Defence in relation to exports

[F14]9. . . . . . .

F14 Reg. 9 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 Food Safety Act 1990

10. 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 for the purposes of these Regulations 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 of the Act;

(e) section 22 (defence of publication in the course of 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 that subsection as applied by sub-paragraph (g) above;

(i) section 35(1) (punishment of offences) in so far as it relates to offences under section 33(1) as applied by sub-paragraph (g) above;

(j) section 35(2) and (3) in so far as it relates to offences under section 33(2) as applied by sub-paragraph (h) above;

(k) section 36 (offences by bodies corporate); and

(l) section 44 (protection of officers acting in good faith).

Amendments and revocations

11.—[F15](1) . . . . . .

(2) The following entries relating to the Cocoa and Chocolate Products Regulations 1976 [F16] shall (in so far as the following Regulations apply to Wales) be omitted —

(a) in the Food (Revision of Penalties) Regulations 1982 [F17], in Schedule 1;

(b) in the Food Safety Act 1990 (Consequential Modifications) (England and Wales) Order 1990 [F18], in Schedule 1 Part I, Schedule 2, Schedule 3 Part I and Schedules 6 and 12;

(c) in the Food Safety (Exports) Regulations 1991 [F19], in Schedule 1 Part I;