Changes to legislation: *The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2002 is up to date with all changes known to be in force on or before 20 September 2019. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

WELSH STATUTORY INSTRUMENTS

2002 No. 2939 (W.280)

FOOD, WALES

The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2002

Made - - - - 27th November 2002
Coming into force in accorance with regulation 1(2) and (3)

In exercise of the powers conferred by sections 16(1)(f), 17(1), 26(3) and 48(1) of the Food Safety Act 1990[F1] and now vested in the National Assembly for Wales[F2], the National Assembly 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 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).
F3 OJ No. L31, 1.2.2002, p.1.

Citation, application and commencement

1.—(1) These Regulations may be cited as the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2002 and extend to Wales only.

(2) Regulations 1, 5 and 10, and regulations 2 and 6 to 9 in so far as they relate to regulation 5, come into force on 31 December 2002.

(3) The remainder of these Regulations come into force—

(a) on 31 December 2002 in relation to an L-tryptophan food; and

(b) in any other case on 1st April 2004.

Interpretation

2.—(1) In these Regulations—

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

"designated PNU food" ("*bwyd DMN dynodedig*") means any PNU food other than infant formulae, follow-on formulae, processed cereal-based foods and baby foods intended for infants and young children;

"Directive 89/398"("*Cyfarwyddeb 89/398*") means Council Directive 89/398/EEC[F4] on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses, as amended by Directive 1999/41/EC of the European Parliament and of the Council [F5];

"Directive 2001/15" ("*Cyfarwyddeb 2001/15*") means Commission Directive 2001/15/EC[F6] (as corrected [F7]) on substances that may be added for specific nutritional purposes in foods for particular nutritional uses;

"L - tryptophan food" ("*bwyd L-tryptoffan*") means any designated PNU food being a food to which L-tryptophan, or any of its sodium, potassium, calcium or magnesium salts or its hydrochloride, has been added for a specific nutritional purpose;

"PNU food" ("*bwyd DMN*") means a food for a particular nutritional use which—

(a) owing to its special composition or process of manufacture, is clearly distinguishable from food intended for normal consumption, and

(b) is sold in such a way as to indicate its suitability for its claimed particular nutritional purpose;

"particular nutritional use" ("*defnydd maethol neilltuol*") means the fulfilment of the particular nutritional requirements of—

(a) certain categories of persons whose digestive processes are, or whose metabolism is, disturbed, or

(b) certain categories of persons whose physiological condition renders them able to obtain a special benefit from the controlled consumption of any substance in food, or

(c) infants or young children in good health; and

"sell" ("*gwerthu*") includes possess for sale and offer, expose or advertise for sale.

(2) Other expressions used both in these Regulations and in Directive 89/398 or 2001/15 have the same meaning in these Regulations as they have in the Directive concerned.

F4 OJ No. L186, 30.6.89, p.27.
F5 OJ No. L172, 8.7.1999, p.38.
F6 OJ No. L52, 22.2.2001, p.19.
F7 OJ No. L253, 21.9.2001, p.34.

Restrictions on sale

3.—(1) No person shall sell any designated PNU food being a food to which a substance falling within one of the categories mentioned in paragraph (2) has been added for a specific nutritional purpose unless that substance—

(a) is listed under that category—

(i) in the case of any food for special medical purposes, in Schedule 1 or 2; and

(ii) in any other case, in Schedule 1; and

(b) complies with the relevant purity criteria referred to in paragraph (3).

(2) For the purposes of paragraph (1), the categories are—

(a) vitamins,

(b) minerals,

(c) amino acids,

(d) carnitine and taurine,

(e) nucleotides, and

(f) choline and inositol.

(3) The relevant purity criteria for the purposes of paragraph (1)(b) are—

(a) the purity criteria, if any, specified by Community legislation for the use of the substance in question in the manufacture of food for purposes other than those covered by Directive 2001/15, or

(b) in the absence of such purity criteria, generally acceptable purity criteria for the substance in question recommended by international bodies.

(4) No person shall sell any designated PNU food in the manufacture of which any substance has been used for a specific nutritional purpose unless that food—

(a) is safe when used in accordance with the manufacturer's instructions (if any); and

(b) fulfils the particular nutritional requirements of the persons for whom it is intended,

as established by generally accepted scientific data.

Verification of regulation 3(4)

4. The manufacturer or, as the case may be, the importer of a designated PNU food in the manufacture of which a substance has been used for a specific nutritional purpose shall supply to the Food Standards Agency on request—

(a) a copy of the scientific work and data establishing that the use of that substance in the manufacture of that food results in a food which meets the criteria in regulation 3(4), or

(b) if such work and data are contained in a publication which is readily available, a reference to that publication.

Notification requirement

5.—(1) Subject to paragraph (2), the manufacturer or, where appropriate, the importer of any notifiable food shall not sell any such food unless at least 3 months before placing food of that particular type on the market in Wales for the first time the manufacturer or, where appropriate, the importer notified the Food Standards Agency in writing by forwarding to it a model of the label to be used for that food and details of the composition of the food.

(2) Paragraph (1) shall not apply if the manufacturer or, where appropriate, the importer has already notified the Food Standards Agency before placing food of that particular type on the market elsewhere in the United Kingdom for the first time in accordance with an equivelent provision having effect there.

(3) In this regulation "notifiable food" ("*bwyd hysbysadwy*") means any L- tryptophan food which is—

(a) intended for use in energy-restricted diets for weight reduction;

(b) intended to meet the expenditure of intense muscular effort, especially for sportsmen; or

(c) for persons suffering from carbohydrate-metabolism disorders (diabetes).

Enforcement

6. Each food authority shall enforce and execute these Regulations in its area.

Offences and penalties

7. If any person—

(a) contravenes regulation 3(1) or (4), or

(b) without reasonable excuse contravenes regulation 4 or 5(1),

that person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Defence in relation to exports

F8 8. . . . . . .

F8 Reg. 8 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

9. 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 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 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 paragraph (g) above;

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

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

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

Amendment of the Tryptophan in Food Regulations 1990

F9 10. . . . . . .

F9 Reg. 10 revoked (11.11.2005) by The Tryptophan in Food (Wales) Regulations 2005 (S.I. 2005/3111), regs. 1, **10(2)**

F10 Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998

D. Elis-Thomas
The Presiding Officer of the National Assembly