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STATUTORY INSTRUMENTS

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**2011 No. 1456**

**FOOD, ENGLAND**

**The Food Additives (England)  
(Amendment) (No.2) Regulations 2011**

*Made - - - - 8th June 2011*

*Laid before Parliament 10th June 2011*

*Coming into force in accordance with regulation 3*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 16(1)(a) and (f), 17(1) and 48(1) of the Food Safety Act 1990<sup>(1)</sup> and now vested in him<sup>(2)</sup>. In accordance with section 48(4A) of that Act, he has had regard to relevant advice given by the Food Standards Agency.

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<sup>(3)</sup>, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

**Title**

1. These Regulations may be cited as the Food Additives (England) (Amendment) (No.2) Regulations 2011.

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- (1) 1990 c. 16. Section 1(1) and (2) (definition of “food”) was substituted by [S.I. 2004/2990](#). Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 ([1999 c.28](#)), “the 1999 Act”. Section 48 was also amended by [S.I. 2004/2990](#). Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 ([1994 c.40](#)), Schedule 6 to the 1999 Act, [S.I. 2004/2990](#) and [S.I. 2004/3279](#).
- (2) Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the Food Standards Act 1999 ([1999 c. 28](#)). Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 ([2006 c.32](#)). Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 ([1998 c. 46](#)) as read with section 40(2) of the 1999 Act.
- (3) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by [Commission Regulation \(EC\) No. 596/2009](#) of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the treaty to Council Decision [1999/468/EC](#) with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p14).

## **Amendment of the Food Additives (England) Regulations 2009**

2.—(1) The Food Additives (England) Regulations 2009<sup>(4)</sup> are amended in accordance with paragraph (2).

(2) In paragraph (1) of regulation 2 (interpretation), at the end of the definition of “Directive 08/128” add the expression “as amended by Commission Directive 2011/3/EU amending Directive 2008/128/EC laying down specific purity criteria on colours for use in foodstuffs;”.

## **Commencement**

3.—(1) These Regulations come into force —

- (a) as regards the entries for synthetic lycopene and lycopene from *Blakeslea trispora* in sections (i) and (iii) respectively of the Annex to Directive 2011/3/EU, 1st July 2011; and
- (b) as regards the entries for lycopene from red tomatoes in section (ii) of that Annex, 1st September 2011.

(2) In this regulation and in regulation 4 Directive 2011/3/EU means Commission Directive 2011/3/EU amending Directive 2008/128/EC laying down specific purity criteria on colours for use in foodstuffs<sup>(5)</sup>.

## **Statutory review**

4.—(1) Before the end of each review period, the Food Standards Agency must —

- (a) carry out a review of regulation 2;
- (b) set out the conclusions of the review in a report; and
- (c) publish the report.

(2) In carrying out the review the Agency must, so far as is reasonable, have regard to how Directive 2011/3 is implemented in other Member States.

(3) The report must in particular —

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
- (b) assess the extent to which those objectives are achieved; and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) “Review period” means —

- (a) the period of 5 years beginning with the day on which these Regulations first come into force; and
- (b) subject to paragraph (5), each successive period of 5 years.

(5) If the report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

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<sup>(4)</sup> S.I. 2009/3238. These Regulations were amended by S.I. 2011/258.

<sup>(5)</sup> OJ No. L13, 18.1.2011, p.59.

Signed by authority of the Secretary of State for Health.

8th June 2011

*Anne Milton*  
Parliamentary Under-Secretary of State,  
Department of Health

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations implement in England Commission Directive 2011/3/EU amending Directive 2008/128/EC laying down specific purity criteria on colours for use in foodstuffs (OJ No. L13, 18.1.2011, p.59) (“the amending Directive”).

2. The amending Directive revises the purity criteria for lycopene derived from red tomatoes, and permits the use of two new sources of lycopene in accordance with prescribed purity criteria.

3. These Regulations implement the amending Directive by making an amendment to regulation 2 of the Food Additives (England) Regulations 2009 (S.I. 2009/3238) so that the definitions of Directive 08/128 in that regulation includes reference to the amending Directive (*regulation 2(2)*).

4. The permission to use the two new sources of lycopene (synthetic lycopene and lycopene from *Blakeslea trispora*) is brought into force earlier than the revision of existing purity criteria for lycopene from red tomatoes (*regulation 3*).

5. The Food Standards Agency is required to review the operation and effect of these Regulations within five years of their first coming into force and within every five years after that. Following a review it will fall to the Food Standards Agency to consider whether the Regulations should remain as they are, or be revoked or amended, and give advice to the Secretary of State accordingly. A further instrument would be needed to revoke or amend the Regulations (*regulation 4*).

6. An impact assessment has not been prepared for this instrument as it has no impact on business or the public or third sectors.