

2012 No. 1155

FOOD, ENGLAND

The Food Additives (England) (Amendment) and the Extraction Solvents in Food (Amendment) (England) Regulations 2012

<i>Made</i> - - - -	<i>25th April 2012</i>
<i>Laid before Parliament</i>	<i>30th April 2012</i>
<i>Coming into force</i> - -	<i>23rd May 2012</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 16(1)(a), (c) and (f), 17(1) and (2) and 48(1) of the Food Safety Act 1990(a) and now vested in him(b), as read with paragraph 1A of Schedule 2 to the European Communities Act 1972(c).

These Regulations make provision for a purpose mentioned in section 2(2) of the 1972 Act and it appears to the Secretary of State that it is expedient for references to an Annex to an EU instrument specified in regulation 2(3) to be construed as references to that Annex as amended from time to time.

In accordance with section 48(4A) of the Food Safety Act 1990, 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(d), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

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- (a) 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.
- (b) 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 1999 Act. 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.
- (c) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006, c.51) and amended by Part 1 of Schedule 1 to the European Union (Amendment) Act 2008 (2008 c.7).
- (d) 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).

Title application and commencement

1. These Regulations may be cited as the Food Additives (England) (Amendment) and the Extraction Solvents in Food (Amendment) (England) Regulations 2012, apply in relation to England only and come into force on 23rd May 2012.

Amendment of the Food Additives (England) Regulations 2009

2.—(1) The Food Additives (England) Regulations 2009(a) are amended in accordance with paragraphs (2) to (5).

(2) In paragraph (1) of regulation 2 (interpretation) —

(a) for the definition of “permitted colour” substitute the following definition —

““permitted colour” means —

- (a) before 1st December 2012, any colour listed in Annex I to Directive 94/36 which satisfies the specific purity criteria for that colour set out in the Annex to Directive 08/128;
- (b) on or after 1st December 2012, any colour listed in Annex I to Directive 94/36 which satisfies the specific purity criteria for that colour set out in the Annex to Regulation 231/2012;”;

(b) for the definition of “permitted sweetener” substitute the following definition —

““permitted sweetener” means —

(a) before 1st December 2012 —

- (i) any sweetener specified in the second column of the Annex to Directive 94/35 which satisfies the specific purity criteria for that sweetener set out in Annex I to Directive 08/60, or
- (ii) in the case of E960 steviol glycosides, a sweetener which satisfies the purity criteria for that sweetener set out in the Annex to Regulation 231/2012;

(b) on or after 1st December 2012 —

- (i) any sweetener specified in the second column of the Annex to Directive 94/35, or
 - (ii) E960 steviol glycosides
- which satisfies the specific purity criteria for that sweetener set out in the Annex to Regulation 231/2012;”;

(c) for the definition of “purity criteria” substitute the following definition —

““purity criteria”, in relation to a miscellaneous additive, means —

- (a) before 1st December 2012, the purity criteria set out in relation to that additive in Annex I to Directive 08/84 or, in the case of E1205 basic methacrylate copolymer, in the Annex to Regulation 231/2012;
- (b) on or after 1st December 2012, the purity criteria set out in relation to that additive in the Annex to Regulation 231/2012;”;

(d) at the end of the definition of “Regulation 1333/2008” insert “as read with Regulation 231/2012 ”; and

(e) after the definition of “Regulation 1333/2008” insert the following definitions —

““Regulation 1129/2011” means Commission Regulation (EU) No. 1129/2011 amending Annex II to Regulation (EC) No. 1333/2008 of the European Parliament and of the Council by establishing a Union list of food additives, as read with Commission Regulation (EU) No. 1131/2011 amending Annex II to Regulation (EC) No. 1333/2008 of the European Parliament and of the Council with regard to steviol glycosides;

(a) S.I. 2009/3238. These Regulations have been amended by S.I. 2011/258 and S.I. 2011/1456.

“Regulation 1130/2011” means Commission Regulation (EU) No. 1130/2011 amending Annex III to Regulation (EC) No. 1333/2008 of the European Parliament and of the Council on food additives by establishing a Union list of food additives approved for use in food additives, food enzymes, food flavourings and nutrients;

“Regulation 231/2012” means Commission Regulation (EU) No. 231/2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council;”.

(3) For paragraph (6) of regulation 2, substitute the following —

“(6) The EU instruments are Directive 94/35, Directive 95/2, Regulation 1333/2008 and Regulation 231/2012.”.

(4) In regulation 14 (offences and penalties) —

(a) in paragraph (2), after the expression “Article 34 of Regulation 1333/2008,” add “Article 2 of Regulation 1129/2011 and Article 2 of Regulation 1130/2011,”; and

(b) omit sub-paragraphs (2)(b) and (2)(c).

(5) In the table in the Schedule (specified Regulation 1333/2008 provisions), immediately after the entries relating to Article 4.1 insert the following entries —

“Article 4.2 (as read with Articles 12, 13.2 and 18.3)	Requirement that only food additives included in the list in Annex III to Regulation 1333/2008 may be used in food additives, food enzymes, food flavourings and nutrients and under the conditions of use specified in that Annex.”
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Amendment of the Extraction Solvents in Food Regulations 1993

3.—(1) The Extraction Solvents in Food Regulations 1993(a) are amended in relation to England in accordance with paragraph (2).

(2) In Schedule 1 Part I (permitted extraction solvents) as entry number 22 in Column 1 add “Dimethyl ether”.

Statutory review

4.—(1) The Food Standards Agency must from time to time —

(a) carry out a review of the operation and effect 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 Regulation (EC) No. 1333/2008 of the European Parliament and of the Council on food additives(b) is executed and enforced 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 the Food Additives (England) Regulations 2009 as they have been amended by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(a) S.I. 1993/1658. These Regulations have been amended by S.I. 1995/1440, S.I. 1998/2257 and, in relation to England only, by S.I. 2005/2626 and S.I. 2011/1738.

(b) OJ No. L354, 31.12.2008, p.16. This instrument was last amended by Commission Regulation (EU) No. 232/2012 amending Annex II to Regulation 1333/2008 of the European Parliament and of the Council as regards the conditions of use and the use levels for Quinoline Yellow (E 104), Sunset Yellow FCF/Orange Yellow S (E 110) and Ponceau 4R, Cochineal Red A (E 124) (OJ No. L78, 17.3.2012, p.1).

(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) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.

Signed by authority of the Secretary of State for Health.

25th April 2012

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations make certain amendments to the Food Additives (England) Regulations 2009 (S.I. 2009/3238) (“the 2009 Regulations”) in order to provide for the execution and enforcement in England of—

- (a) Commission Regulation (EU) No. 1129/2011 amending Annex II to Regulation (EC) No. 1333/2008 of the European Parliament and of the Council by establishing a Union list of food additives (OJ No. L295, 12.11.2011, p.1) (“Regulation 1129/2011”);
- (b) Commission Regulation (EU) No. 1130/2011 amending Annex III to Regulation (EC) No. 1333/2008 of the European Parliament and of the Council on food additives by establishing a Union list of food additives approved for use in food additives, food enzymes, food flavourings and nutrients (OJ No. L295, 12.11.2011, p.178) (“Regulation 1130/2011”);
- (c) Commission Regulation (EU) No. 1131/2011 amending Annex II to Regulation (EC) No. 1333/2008 of the European Parliament and of the Council with regard to steviol glycosides (OJ No. L295, 12.11.2011, p.205); and
- (d) Commission Regulation (EU) No. 231/2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No. 1333/2008 of the European Parliament and of the Council (OJ No. L83, 22.3.2012, p.1) (“Regulation 231/2012”).

2. These Regulations amend the 2009 Regulations so as to—

- (a) amend the definitions of “permitted colour”, “permitted sweetener” and “purity criteria” to refer to Regulation 231/2012 (*regulation 2(2)(a), (b) and (c)*);
- (b) extend the definition of Regulation 1333/2008 to include reference to Regulation 231/2012 (*regulation 2(2)(d)*);
- (c) insert definitions of Commission Regulations 1129/2011, 1130/2011 and 231/2012 mentioned in paragraph 1 (*regulation 2(2)(e)*);
- (d) include Regulation 231/2012 in the list of EU instruments to which ambulatory reference is made (*regulation 2(3)*);
- (e) include reference to Regulations 1129/2011 and 1130/2011 in regulation 14 (*regulation 2(4)(a)*);
- (f) omit references in regulation 14 to Article 4.2 of Regulation 1333/2008 (*regulation 2(4)(b)*); and
- (g) insert reference to Article 4.2 in the Schedule of specified Regulation 1333/2008 provisions (*regulation 2(5)*).

3. These Regulations also make an amendment to the Extraction Solvents in Food Regulations 1993 (S.I. 1993/1658) in order to rectify an omission from the Extraction Solvents in Food (Amendment) (England) Regulations 2011 (S.I. 2011/1738) (*regulation 3*).

4. These Regulations contain provisions requiring the Food Standards Agency to carry out a review, at intervals of not more than 5 years, of the 2009 Regulations as amended by these Regulations (*regulation 4*).

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

STATUTORY INSTRUMENTS

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