Statutory Instrument 2002 No. 3169

The Kava-kava in Food (England) Regulations 2002

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STATUTORY INSTRUMENTS

2002 No. 3169

FOOD, ENGLAND

The Kava-kava in Food (England) Regulations 2002

Made	*18th December 2002*
Laid before Parliament	*23rd December 2002*
Coming into force	*13th January 2003*

The Secretary of State, in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 18(1)(c), 26(1) and (3) and 48(1) of the Food Safety Act 1990[1] and now vested in him[2]

and 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[3] and in accordance with section 48(4) and (4B) of the said Act, hereby makes the following Regulations:

Title, commencement and extent

1. These Regulations -

(a) may be cited as the Kava-kava in Food (England) Regulations 2002;

(b) shall come into force on 13th January 2003;

(c) shall extend to England only.

Interpretation

2. In these Regulations -

"the Act" means the Food Safety Act 1990;

"food authority" does not include the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and the Middle Temple);

"Kava-kava" means a plant, or any part of or an extract from a plant, belonging to the species *Piper methysticum*;

"port health authority" means -

(a) in relation to the London port health district (within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984[4] by section 7(1) of that Act), the Common Council of the City of London; and

(b) in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984, a port health authority for that district constituted by order under section 2(4) of that Act.

Prohibition on sale etc. of food consisting of or containing Kava-kava

3. No person shall -

(a) sell; or

(b) possess for sale or offer, expose or advertise for sale; or

(c) import into England from a country outside the United Kingdom,

any food consisting of or containing Kava-kava.

Penalty and enforcement

4. - (1) Any person who contravenes regulation 3 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) Subject to paragraph (3), each food authority shall enforce within its area the

provisions of these Regulations.

(3) Each port health authority shall enforce within its district the provisions of these Regulations.

Application of various provisions of the Food Safety Act 1990

5. - (1) 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 (presumption that food 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 sections 8, 14 or 15 of the Act;

(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);

(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 section 33(1)(b) as applied by sub-paragraph (g);

(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);

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

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

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

(2) Section 8(3) of the Act (which makes presumptions in the case of batches etc. of food) shall apply to food which it is an offence to sell under these Regulations as it applies to food which fails to comply with food safety requirements.

(3) Section 9 of the Act (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if food which it were an offence to sell under them were food which failed to comply with food safety requirements.

Signed by authority of the Secretary of State for Health

Hazel Blears
Parliamentary Under-Secretary of State, Department of Health

18th December 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations extend to England only.

These Regulations prohibit the sale, possession for sale, offer, exposure or advertisement for sale, and the importation into England from outside the United Kingdom, of any food consisting of, or containing, Kava-kava (being a plant or part of a plant, or an extract from such a plant, belonging to the species *Piper methysticum*) (regulation 3). Any such food may be treated as being unfit for human consumption and be liable to be seized and destroyed (regulation 5(3)).

These Regulations were notified in draft to the European Commission in accordance with Article 8 of the European Parliament and Council Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services (OJ No. L204, 21.7.1998, p.37), as amended by the European Parliament and Council Directive 98/48/EC (OJ No. L217, 5.8.1998, p.18).

A Regulatory Impact Assessment has been prepared and placed in the Library of each House of Parliament, and copies can be obtained from the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.

Notes:

[1] 1990 c. 16.back

[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 paragraphs 7 and 8 of Schedule 5 to the Food Standards Act 1999 (c. 28), and paragraph 21 of that Schedule amends section 48 of the 1990 Act. Functions of "the Ministers" 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 1999 Act, and those functions so far as exercisable in relation to Scotland were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (c. 46), as read with section 40(2) of the 1999 Act.back

[3] OJ No. L31, 1.2.2002, p.1; 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.back

[4] 1984 c. 22.back

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