Welsh Statutory Instrument 2002 No. 3157 (W.293)

The Kava-kava in Food (Wales) Regulations 2002

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STATUTORY INSTRUMENTS

2002 No. 3157 (W.293)

FOOD, WALES

The Kava-kava in Food (Wales) Regulations 2002

Made	*17th December 2002*
Coming into force	*9th January 2003*

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 the National Assembly for Wales[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 application

1. These Regulations -

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

(b) shall come into force on 9th January 2003;

(c) shall apply to Wales only.

Interpretation

2. In these Regulations -

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

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

"port health authority" ("*awdurdod iechyd porthladd*") means -

in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984[4], 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 Wales from a country outside the United Kingdom or transport into Wales from any other part of the United Kingdom any food consisting of or containing Kava-kava.

Penalty and enforcement

4. - (1) Any person who contravenes or fails to comply with 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 58(1) (which relates to territorial waters).

(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 on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998[5]

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

17th December 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prohibit the sale, possession for sale, offer, exposure or advertisement for sale, and the importation into Wales from outside the United Kingdom or the transportation into Wales from any other part of 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)).

A draft of the Regulations was notified 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 of 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 the National Assembly for Wales and copies can be obtained from the Food Standards Agency, 1st Floor, Southgate House, Cardiff, CF10 1EW.

Notes:

[1] 1990 c.16.back

[2] Functions of the Secreatary of State 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.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

[5] 1998 c.38back

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