Statutory Instrument 2004 No. 455

The Kava-kava in Food (England) (Amendment) Regulations 2004

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STATUTORY INSTRUMENTS

2004 No. 455

FOOD, ENGLAND

The Kava-kava in Food (England) (Amendment) Regulations 2004

Made	*24th February 2004*
Laid before Parliament	*25th February 2004*
Coming into force	*17th March 2004*

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 make the following Regulations:

Title and commencement

1. These Regulations may be cited as the Kava-kava in Food (England) (Amendment) Regulations 2004 and shall come into force on 17th March 2004.

Amendments to the Kava-kava in Food (England) Regulations 2002

2. - (1) The Kava-kava in Food (England) Regulations 2002[4] shall be amended in accordance with paragraphs (2) and (3).

(2) In regulation 2 (interpretation) -

(a) immediately after the definition of "the Act", there shall be inserted the following definitions -

" "EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992[5] as adjusted by the Protocol signed at Brussels on 17th March 1993[6];

"EEA State" means a State which is a Contracting Party to the EEA Agreement;"; and

(b) immediately after the definition of "food authority", there shall be inserted the following definition -

" "free circulation in member States" has the same meaning as in Article 23.2, as read with Article 24, of the Treaty establishing the European Community;".

(3) In regulation 3 (prohibition on sale etc. of food consisting of or containing Kava-kava) -

(a) for the words "No person shall" there shall be substituted the phrase " (1) Subject to paragraph (2), no person shall"; and

(b) immediately after the existing text there shall be added the following paragraph -

" (2) The prohibition imposed by paragraph (1) shall not apply where the food consisting of or containing Kava-kava is imported from an EEA State, if the food -

(a) originates in an EEA State, or

(b) originates outside the European Economic Area, but is in free circulation in member States,

and is being, or is to be, exported to an EEA State other than the United

Kingdom.".

Signed by authority of the Secretary of State for Health

Melanie Johnson
Parliamentary Under Secretary of State, Department of Health

24th February 2004

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations amend the Kava-kava in Food (England) Regulations 2002 (S.I. 2002/3169) which prohibit the sale, possession for sale, offer, exposure or advertisement for sale, and the importation into England from a country outside the United Kingdom, of any food consisting of, or containing, Kava-kava (being a plant, or any part of or an extract from a plant, belonging to the species *Piper methysticum*).

2. These Regulations provide for an exception to the prohibition imposed by the Kava-kava in Food (England) Regulations 2002 where the food is imported from an EEA State, if it originates from such a State or originates outside the EEA but is in free circulation in member States (within the meaning of Article 23.2, as read with Article 24, of the EC Treaty), and is being, or is to be, exported to an EEA State other than the United Kingdom *(regulation 2(3)*).

3. In the light of the amendments effected by regulation 2(3) of these Regulations, relevant definitions are inserted into regulation 2 (interpretation) of S.I. 2002/3169 (*regulation 2(2)*).

4. No regulatory impact assessment has been prepared in relation to these Regulations.

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] S.I. 2002/3169.back

[5] OJ No. L1, 3.1.1994, p.3.back

[6] OJ No. L1, 3.1.1994, p.572.back

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