

# Statutory Instrument 1992 No. 1357

## The Food (Lot Marking) Regulations 1992

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### STATUTORY INSTRUMENTS

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**1992 No. 1357**

### **FOOD**

### The Food (Lot Marking) Regulations 1992

<i>Made</i>	<i>4th June 1992</i>
<i>Laid before Parliament</i>	<i>10th June 1992</i>
<i>Coming into force</i>	<i>1st July 1992</i>

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Health and the Secretary of State for Wales, acting jointly, in relation to England and Wales, and the Secretary of State for Scotland in relation to Scotland, in exercise of the powers conferred on them by sections 4(1), 6(4), 16(1)(e), 17(1) 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990<sup>(1)</sup> and of all other powers enabling them in that behalf, hereby make the following Regulations, after consultation in accordance with section 48 of the said Act with such organisations as appear to them to be representative of interests substantially affected by the Regulations:—

#### **Title and commencement**

**1.** These Regulations may be cited as the Food (Lot Marking) Regulations 1992 and shall come into force on 1st July 1992.

### **Interpretation and scope**

- 2.—(1) In these Regulations, except where the context requires otherwise—  
"the Act" means the Food Safety Act 1990;  
"food" has the meaning which it has in section 16(5) of the Act;  
"the labelling regulations" means—  
    (a) in relation to food in England and Wales, the Food Labelling Regulations 1984<sup>[2]</sup>, and  
    (b) in relation to food in Scotland, the Food Labelling (Scotland) Regulations 1984<sup>[3]</sup>,  
and "indication of minimum durability" and  
    "\"use by\" date" have the same meanings as in the labelling regulations;  
"prepacked" has the meaning which it has in the labelling regulations and  
"prepackaging" shall be construed accordingly;  
"sale" includes possessing for sale, offering for sale and exposing for sale;  
"sell" shall be construed as co-extensive with sale; and  
"ultimate consumer" has the meaning which it has in the labelling regulations.

(2) These Regulations do not apply to any food which is not intended for sale for human consumption.

### **Lot marking requirement**

3.—(1) Subject to the following provisions of these Regulations, no person shall sell any food to which a lot marking obligation applies unless the lot marking rules are observed in relation to that sale.

- (2) For the purposes of these Regulations—
- (a) food is food to which a lot marking obligation applies if it comprises—
    - (i) a production sales unit, that is to say a sales unit of food produced as part of a batch of such sales units produced under similar conditions,
    - (ii) a preparation sales unit, that is to say a sales unit of food prepared as part of a batch of such sales units prepared under similar conditions, or
    - (iii) a packaging sales unit, that is to say a sales unit of food packaged as part of a batch of sales units packaged under similar conditions, and
  - (b) a sales unit of food comprises food in the process of being, or which can reasonably be expected to be, sold as an identifiable unit.

(3) The Schedule to these Regulations specifies how lot marking rules are observed in relation to any sale of food.

### **Exception for particular types of sale**

4. Nothing in these Regulations requires the lot marking rules to be observed in relation to any sale of food where—
- (a) the food comprises an agricultural product and, in connection with that sale, it leaves the agricultural premises of its production—
    - (i) for delivery to a temporary storage, preparation or packaging station, or to a producers' organisation, or
    - (ii) for collection for immediate integration into an operational preparation or processing system, or
  - (b) the sale is a sale to the ultimate consumer in circumstances where the food is not prepacked, is prepacked for direct sale or is packed at the request of the purchaser.

### **Exception for sales units marked or labelled with indication of minimum durability or "use by" date**

**5.—(1)** Nothing in these Regulations requires a sales unit to bear any lot marking indication where—

- (a) it is marked or labelled at the time of its sale with an indication of minimum durability or a "use by" date, and
- (b) that marking or labelling has been carried out in accordance with the labelling regulations.

(2) Where a sale is not one to which the labelling regulations apply, but the sales unit is marked or labelled in such a manner as would accord with the labelling regulations were the sale one to which they applied that marking or labelling shall be treated for the purposes of paragraph (1) above as having been carried out in accordance with the labelling regulations.

### **Exception for particular types of sales units**

**6.** Nothing in these Regulations requires a sales unit—

- (a) which is in a container the area of the largest side of which is less than 10 cm<sup>2</sup>,
- (b) which comprises food which—
  - (i) is prepacked, and
  - (ii) is sold at a catering establishment for immediate consumption there, and
  - (iii) is sold as an individual portion, and
  - (iv) is intended as an accompaniment to another food, or
- (c) which comprises an individual portion of an edible ice supplied to its seller in bulk packaging containing more than one such portion and bearing the lot marking indication which that portion would, but for this sub-paragraph, have been required to bear,

to bear a lot marking indication.

### **Transitional exceptions**

**7.—(1)** Nothing in these Regulations requires a sales unit the marking or labelling of which was completed before 1st July 1992 to bear a lot marking indication.

(2) Nothing in these Regulations requires a sales unit to bear a lot marking indication in any sale which is completed before 1st January 1997 where the sales unit is in a glass bottle intended for re-use which is indelibly marked and therefore bears no label, ring or collar.

### **Enforcement and defence**

**8.—(1)** If any person contravenes regulation 3 above he 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) Each food authority shall enforce and execute these Regulations in its area.

(3) In this regulation "food authority" does not include either the council of any district in a non-metropolitan county in England and Wales or the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and the Middle Temple).

(4) In any proceedings for an offence under regulation 3 above, it shall, subject to paragraph (8) below, be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(5) Without prejudice to the generality of paragraph (4) above, a person charged with an offence under regulation 3 above who neither—

(a) prepared the food in respect of which the offence is alleged to have been committed; nor  
(b) imported it into Great Britain,  
shall be taken to have established the defence provided by that paragraph if he satisfies the requirements of paragraph (6) or (7) below.

(6) A person satisfies the requirements of this paragraph if he proves—

- (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;
- (b) that he carried out all checks of the food in question as were reasonable in all the circumstances, or that it was reasonable in all the circumstances for him to rely on checks carried out by the person who supplied the food to him; and
- (c) that he did not know and had no reason to suspect at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision.

(7) A person satisfies the requirements of this subsection if he proves—

- (a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;
- (b) that the sale in relation to which the offence is alleged was not a sale or intended sale under his name or mark; and
- (c) that he did not know, and could not reasonably have been expected to know, at the time of the commission of the alleged offence that his act or omission would amount to an offence under the relevant provision.

(8) If in any case the defence provided by paragraph (4) above involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless—

- (a) at least seven clear days before the hearing; and
- (b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,  
he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(9) In paragraph (8) above any reference to appearing before a court shall be construed as including a reference to being brought before a court.

#### **Application of provisions of the Act**

9. The following provisions of the Act shall apply for the purposes of these Regulations as they apply for the purposes of the Act—

- (a) section 2 (extended meaning of sale);
- (b) section 3 (presumption that food is intended for human consumption).

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on 1st June 1992.

*John Selwyn Gummer*

Minister of Agriculture, Fisheries and Food

Signed by authority of the Secretary of State for Health:

*Cumberlege*

Parliamentary Under Secretary of State, Department of Health

4th June 1992

*David Hunt*

Secretary of State for Wales

2nd June 1992

*Hector Monro*

Parliamentary Under Secretary of State, Scottish Office

2nd June 1992

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*Notes:*

[1] [1990 c. 16](#). [back](#)

[2] S.I. 1984/1305, to which there are amendments not relevant to these Regulations. [back](#)

[3] S.I. 1984/1519, to which there are amendments not relevant to these Regulations. [back](#)