

Statutory Instrument 2005 No. 1099

The Miscellaneous Food Additives (Amendment) (England) Regulations 2005

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STATUTORY INSTRUMENTS

2005 No. 1099

FOOD, ENGLAND

The Miscellaneous Food Additives (Amendment) (England) Regulations 2005

Made

4th April 2005

To be laid before Parliament

Made

19th April 2005

The Secretary of State, in exercise of the powers conferred on him by sections 16(1)(a), 17(1), 26(1) and (3) and 48(1) of, and paragraph 1 of Schedule 1 to, 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 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[3] makes the following Regulations:

Title, commencement and application

1. These Regulations -

- (a) may be cited as the Miscellaneous Food Additives (Amendment) (England) Regulations 2005;
- (b) shall come into force on 19th April 2005;
- (c) shall apply in relation to England only.

Amendment of the Miscellaneous Food Additives Regulations 1995

2. The Miscellaneous Food Additives Regulations 1995[4] shall be amended in accordance with regulations 3 to 14 below.

3. In paragraph (1) of regulation 2 (interpretation) -

(a) after the definition of "colour", there shall be inserted the following definition -

" Directive 88/388 EC means Council Directive 88/388/EEC[5] on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production";

(b) in the definition of "Directive 95/2/EC" for the words "and European Parliament and Council Directive 2001/5/EC" there shall be substituted the following words -

" , European Parliament and Council Directive 2001/5/EC[6] and European Parliament and Council Directive 2003/114/EC[7]";

(c) after the definition of flavour enhancer, there shall be inserted the following definition -

" "flavouring" bears the same meaning as in Article 1.2 of Directive 88/388/EEC[8]";

(d) for the definition of "stabiliser", there shall be substituted the following definition -

"stabiliser" means any substance which makes it possible to maintain the physico-chemical state of a foodstuff; including any substance which enables the maintenance of a homogenous dispersion of two or more immiscible substances in a foodstuff, substances which stabilise, retain or intensify an existing colour of a foodstuff and substances which increase the binding capacity of the food, including the formation of cross-links between proteins enabling the binding of food pieces into re-constituted food;"

4. In paragraph (1) of regulation 4 (use of miscellaneous additives in or on compound foods), after the words "that compound food contains, as an ingredient, a food", there shall be inserted the following words -

" or a flavouring".

5. After regulation 4 the following regulation shall be inserted -

" Use of permitted miscellaneous additives in flavourings

4A. - (1) Where -

- (a) a permitted miscellaneous additive is used in a flavouring; and
- (b) that flavouring is an ingredient of a compound food; and
- (c) the permitted miscellaneous additive performs a technological purpose in the final food;

the permitted miscellaneous additive shall be regarded for the purposes of these Regulations as an additive of the final food.

(2) No person shall use any permitted miscellaneous additive in or on any flavouring where -

- (a) the level of such additives used exceeds the minimum necessary to guarantee the safety and quality of the flavouring and to facilitate its storage;
- (b) the presence of such additives is a hazard to human health, or misleading to the consumer."

6. In regulation 11 (transitional provision and exemptions), after paragraph (1E), there shall be inserted the following paragraph -

" (1F) In any proceedings for an offence under these Regulations in respect of any food additives, food or flavouring, it shall be a defence to prove -

- (a) the food additive, food or flavouring concerned was put on the market or labelled before 27th January 2006; and
- (b) the matter constituting the offence would not have constituted

an offence under these Regulations if the amendments made by regulations 3 to 6, 7(b), 8(a), 8(b), 9(a), 10, 11 (a) to (c), (e) to (i) and (k) to (l) of the Miscellaneous Food Additives (Amendment) (England) Regulations 2005 had not been made when the food additive, food or flavouring was placed on the market or labelled."

7. In Schedule 1 (miscellaneous additives generally permitted for use in foods not referred to in schedule 6, 7 or 8) -

(a) for Note 1, there shall be substituted the following note -

" (1) The substances E407, E407a and E440 may be standardised with sugars, on condition that this is stated in addition to the number and designation.";

(b) in the entry relating to E170, in the second column, for the words "Calcium carbonates (i) calcium carbonate (ii) calcium hydrogen carbonate", there shall be substituted the following words -

" Calcium carbonate";

(c) in the entry relating to E466, in the second column, the following words shall be added at the end -

" Cellulose gum";

(d) in the entry relating to E469, in the second column, the following words shall be added at the end -

" Enzymatically hydrolysed cellulose gum".

8. In Schedule 2 (conditionally permitted preservatives and antioxidants) part A (sorbates, benzoates and p-hydroxybenzoates) -

(a) in the first column (entitled "Food") of the second table, for the words "Partially baked, pre-packed bakery wares intended for retail sale", there shall be substituted the following words -

" Partially baked, pre-packed bakery wares intended for retail sale and energy-reduced bread intended for retail sale";

(b) the following entries shall be added to the second table at the end:

" Crayfish tails, cooked and pre-packed	2000					
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Marinated cooked molluscs						
Flavourings				1500		"

9. Schedule 2 Part C (other preservatives) -

- (a) the entry relating to E230 shall be omitted;
- (b) in the entry relating to E1105, in the third and fourth columns (entitled respectively "Food" and "Maximum level") there shall be added the following entries -

"Wine in accordance with Regulation (EC) No. 1493/1999[9] and its implementing Regulation (EC) No. 1622/2000[10]	Pro memoria"
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10. In Schedule 2 Part D (other antioxidants) -

- (a) in the entry relating to E310, E311, E312 and E320, in the third and fourth columns (entitled respectively "Food" and "Maximum level (mg/kg)") the following entries shall be added -

"Essential oils	1000 mg/kg (gallates and BHA, individually or in combination) E310-E320 only
Flavourings other than essential oils	100 mg/kg (gallates, individually or in combination) or 200 mg/kg (BHA)E310-E320 only"

- (b) in the entry relating to E315 and E316, for the words "semi-preserved and preserved meat products", there shall be substituted the following words -

" Cured meat products and preserved meat products".

11. In Schedule 3 (other permitted miscellaneous additives) -

- (a) in the entry relating to E338, E339, E340, E341, E343, E450, E451 and E452 -

- (i) in the third and fourth columns (entitled respectively "Food" and "Maximum level") the following entries shall be added -

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"Flavourings"	"40g/kg"
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(ii) in the third column, the words "cider and perry" and in the corresponding entry in the fourth column, the words "2g/l" shall be omitted;

(b) in the entry relating to E416, in the third and fourth columns, the following entries shall be added -

"Flavourings"	"50g/kg"
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(c) in the entry relating to E432, E433, E434, E435 and E436, in the third and fourth columns, the following entries shall be added -

"Flavourings, except liquid smoke flavourings and flavourings based on spice oleoresins"	"10g/kg"
"Foodstuffs containing liquid smoke flavourings and flavourings based on spice oleoresins"	"1g/kg"

(d) in the entry relating to E444, in the third and fourth columns, the following entries shall be added -

"Flavoured cloudy spirit drinks containing less than 15% alcohol by volume"	"300 mg/l"
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(e) in the entry relating to E459, in the third and fourth columns, the following entries shall be added -

"Encapsulated flavourings in	"500mg/l
- flavoured teas and flavoured powdered instant drinks	1g/kg in foodstuffs as consumed or as reconstituted according to the instructions of the manufacturer"
- flavoured snacks"	

(f) in the entry relating to E551, in the third and fourth columns, the following entries shall be added -

"Flavourings	50g/kg E551 only"
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(g) in the entry relating to E900, in the third and fourth columns, the following entries shall be added -

"Flavourings"	"10 mg/kg"
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(h) in the entry relating to E901, E902, E903 and E904, the words "E903 Carnauba wax" shall be omitted;

(i) after the entry relating to E901, E902 and E904, as amended by paragraph (h) above, the following entry shall be inserted -

"E903	Carnauba wax	As glazing agents only:	
		- confectionery (including chocolate)	500 mg/kg" 1200 mg/kg (only for chewing gum)
		- small products of fine bakery wares coated with chocolate	200 mg/kg
		- snacks	200 mg/kg
		- nuts	200 mg/kg
		- coffee beans	200 mg/kg
		- dietary food supplements	200 mg/kg
		- fresh citrus fruits, melons, apples, pears, peaches and pineapples (surface treatment only)	200 mg/kg"

(j) after the entry for E905, the following entry shall be inserted -

"E907	Hydrogenated poly-1-decene	As glazing agent for	
		- sugar confectionery	2g/kg
		- dried fruits	2g/kg"

(k) the following entries shall be added to the table at the end -

"E1505	Triethyl citrate	Flavourings	3g/kg from all sources in foodstuffs as consumed or as reconstituted according to the instructions of the manufacturer; individually or in combination. In the case of beverages, the
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			maximum level of E1520 shall be 1g/l
E1517	Glyceryl diacetate (diacetin)		
E1518	Glyceryl triacetate (triacetin)		
E1520	Propan-1,2-diol (propylene glycol)		
E1519	Benzyl alcohol	Flavourings for	100 mg/l
		- liqueurs, aromatised wines, aromatised wine-based drinks and aromatised wine-products cocktails	250 mg/kg from all sources in foodstuffs as consumed or as reconstituted according to the instruction of the manufacturer"
		- confectionery including chocolate and fine bakery wares	

(l) at the end of the Schedule, after the table, the following words shall be added -

" Note:

Spice oleoresins are defined as extracts of spices from which the extraction solvent has been evaporated leaving a mixture of the volatile oil and resinous material from the spice."

12. In Schedule 4 (permitted carriers and carrier solvents) -

(a) in the entry relating to E468, in the second column the following entry shall be added -

" Cross-linked cellulose gum";

(b) the following entry shall be added to the table at the end -

"E555	Potassium aluminium silicate	In E171 titanium dioxide and E172 iron oxides and hydroxides (max 90% relative to the pigment)"
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13. In Schedule 7 (foods in which a limited number of miscellaneous additives listed in Schedule 1 may be used) -

(a) in the entry relating to cocoa and chocolate products as defined in Directive 2000/36/EC, in the second and third columns (entitled respectively "Additive" and "Maximum level") after the entry relating to E471, the following entries shall be added -

"E472c	Citric acid esters of mono- and diglycerides of fatty acids	quantum satis"
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(b) in the entry relating to cocoa and chocolate products as defined in Directive 2000/36/EC, the entry relating to grape juice as defined in Directive 2001/112/EC, the entry relating to ripened cheese and the entry relating to sliced and grated ripened cheese, in the second column, for the words "E170 Calcium carbonates", there shall be substituted in each case the following words -

"E170	Calcium carbonate"
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(c) in the entry relating to frozen and deep-frozen unprocessed fruit and vegetables; pre-packed, refrigerated unprocessed fruit and vegetables ready for consumption and pre-packed, unprocessed and peeled potatoes, to the second and third columns, the following entries shall be added -

"E296	Malic acid	quantum satis (only for peeled potatoes)"
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(d) in the entry relating to fruit compote, to the second and third columns, the following entries shall be added -

"E440	Pectin	quantum satis (only for fruit compote other than apple)
E509	Calcium chloride	"

(e) in the entry relating to mozzarella and whey cheese, in the second and third columns, the following entries shall be added -

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"E460ii	Powdered cellulose	quantum satis (only for grated and sliced cheese)"
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(f) the following entry shall be added to the table at the end -

"UHT goat milk	E331 Sodium citrates	4g/l
Chestnuts in liquid	E410 Locust bean gum" E412 Guar gum E415 Xanthane gum	quantun satis"

14. In Schedule 8 (miscellaneous additives permitted in foods for infants and young children) -

(a) in the Notes, after note 1A there shall be inserted the following note -

" **1B.** Formulae and weaning foods for infants and young children may contain E1450 starch sodium octenyl succinate resulting from the addition of vitamin preparations or polyunsaturated fatty acid preparations. The carry over of E1450 in the product ready for consumption is not to be more than 100 mg/kg from vitamin preparations and 1000 mg/kg from polyunsaturated fatty acid preparations.";

(b) in Part 3 (miscellaneous additives permitted in weaning foods for infants and young children in good health), in the entry relating to E170, in the second column, for the words "Calcium carbonates" there shall be substituted the word -

" Calcium carbonate";

(c) in Part 4 (miscellaneous additives permitted in foods for infants and young children for special medical purposes), for the title, the following words shall be substituted -

" MISCELLANEOUS ADDITIVES PERMITTED IN DIETARY FOODS FOR INFANTS AND YOUNG CHILDREN FOR SPECIAL MEDICAL PURPOSES AS DEFINED IN DIRECTIVE 1999/21/EC[[11](#)]";

(d) in Part 4, the following entry shall be added to the table at the end -

"E472c	Citric acid esters of mono-and	7.5g/l sold as powder 9g/l	From birth
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	diglycerides of fatty acids	sold as liquid	onwards"
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Signed by the authority of the Secretary of State for Health

Melanie Johnson

Parliamentary Under Secretary of State, Department of Health

4th April 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only, further amend the Miscellaneous Food Additives Regulations 1995 (S.I. No. 1995/3187) as already amended and implement Directive 2003/114 of the European Parliament and of the Council amending Directive 95/2/EC on food additives other than colours and sweeteners (OJ No. L24, 29.1.2004, p.58).

2. These Regulations amend the Miscellaneous Food Additives Regulations 1995 in relation to England by -

- (a) inserting a definition of flavouring, as the Regulations now apply to control the use of miscellaneous additives in flavourings (*regulation 3(a) and (c)*);
- (b) bringing up to date the definition of "Directive 95/2/EC" to cover the amendment of that Directive by Directive 2003/114/EC (*regulation 3(b)*);
- (c) substituting a new definition for the term "stabiliser" to include substances which increase the binding capacity of food (*regulation 3(d)*);
- (d) making an amendment to regulation 4 to ensure that a flavouring which lawfully has in or on it a permitted miscellaneous additive can be used as an ingredient in a compound food (*regulation 4*);
- (e) providing that where a permitted miscellaneous additive used in a flavouring performs a technological function in the final food in which that flavouring is an ingredient, it is to be regarded as an additive of the final food (*regulation 5*);
- (f) prohibiting the use of additives in flavourings in quantities greater than the minimum necessary, or in circumstances where they would be a hazard to human health or misleading to the consumer, and making contravention an offence (*regulation 5*);
- (g) making transitional provision to allow the marketing of additives, flavourings or foods marketed or labelled before 27th January 2006, which are legal under existing rules (*regulation 6*);

- (h) permitting standardisation of E407a, in addition to E407 and E440 with sugars, provided this is stated in addition to the number and designation of the additive (*regulation 7(a)*);
- (i) substituting "calcium carbonate" as the name for E170 (*regulations 7(b), 13(b) and 14(b)*);
- (j) adding to the acceptable names for E466, E468 and E469 (*regulations 7(c) and (d) and 12(a)*);
- (k) permitting a new additive, E907 to be used as a glazing agent in sugar confectionery and dried fruit (*regulation 11(j)*);
- (l) substituting new definitions of food categories in which permitted miscellaneous additives may be used (*regulations 8(a) and 10(b)*);
- (m) prohibiting the use of E230 as a permitted preservative for surface treatment of citrus fruits (*regulation 9(a)*);
- (n) extending food categories in which permitted miscellaneous additives can be used (*regulations 8(b), 9(b), 11(d), 13(a) and (c)-(f), 14(d)*);
- (o) prohibiting the use of phosphates in cider and perry (*regulation 11(a)(ii)*);
- (p) providing numerical limits to restrict the use of E903 (*regulation 11(h)-(i)*);
- (q) making provision for the restricted use of additives in flavourings (*regulations 8(b), 10(a), 11(a)(i), (b)-(c), (e)-(g) and (k)*);
- (r) inserting a definition of spice oleoresins in Schedule 3 (*regulation 11(l)*);
- (s) permitting a new carrier solvent, E555 to be used in certain specified colours (*regulation 12(b)*);
- (t) clarifying the extent to which E1450 may be carried over into formulae and weaning foods for infants (*regulation 14(a)*);
- (u) bringing up to date the title of Part 4 of Schedule 8 to take account of Commission Directive 1999/21/EC on dietary foods for special medical purposes (OJ No. L91, 7.4.1999, p.29) (*regulation 14(c)*).

3. A full Regulatory Impact Assessment of the effect that these Regulations will have on the costs of business has been prepared and placed in the Library of each House of Parliament. Copies may be obtained from the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.

Notes:

[1] 1990 c. 16; section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990.[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 paragraphs 12 and 21 of that Schedule amend respectively sections 17(1) and 48 of the 1990 Act. Section 48 was also amended by S.I. 2004/2990. 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. Regulation 13(4) of S.I. 2000/656 expressly authorises the Secretary of State to amend or revoke existing Regulations made or having effect as if made by the Minister of Agriculture, Fisheries and Food (whether with others or not) under the Food Safety Act 1990.[back](#)

[3] OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4). By virtue of regulation 5 of the Food Safety Act 1990 (Amendment) Regulations 2004 (S.I. 2004/2990), with effect from 7th December 2004 the consultation requirement contained in section 48(4) of the 1990 Act is disapplied in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.[back](#)

[4] S.I. 1995/3187, amended by S.I. 1997/1413, S.I. 1999/1136, S.I. 2000/3323, S.I. 2001/60, S.I. 2001/2294, S.I. 2001/3442, S.I. 2001/3775, S.I. 2002/379, S.I. 2003/1008, S.I. 2003/1563, S.I. 2003/1564, S.I. 2003/1596, S.I. 2003/1659, S.I. 2003/2243, S.I. 2003/3120, S.I. 2003/3295 and S.I. 2004/2601.[back](#)

[5] OJ No. L184, 15.7.1988, p.61.[back](#)

[6] OJ No. L55, 24.2.2001, p.59.[back](#)

[7] OJ No. L24, 29.1.2004, p.58.[back](#)

[8] OJ No. L184, 15.7.1988, p.61.[back](#)

[9] Council Regulation (EC) No. 1493/1999 of 17th May 1999 on the common organisation of the market in wine, OJ No. L179, 14.7.1999, p.1.[back](#)

[10] Commission Regulation (EC) No. 1622/2000 of 24th July 2000 laying down certain detailed rules for implementing Regulation (EC) No. 1493/1999 on the common organisation of the market in wine and establishing a Community code of oenological practices and processes, OJ No. L194, 31.7.2000, p.1.[back](#)

[11] Commission Directive 1999/21/EC on dietary foods for special medical purposes, OJ No. L91, 7.4.1999, p.29.[back](#)

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