

Statutory Instrument 1995 No. 3124

The Colours in Food Regulations 1995

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STATUTORY INSTRUMENTS

1995 No. 3124

FOOD

The Colours in Food Regulations 1995

Made 3rd December 1995

Laid before Parliament 11th December 1995

Coming into force 1st January 1996

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 6(4), 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 of all other powers enabling them in that behalf, hereby make the following Regulations, after consultation in accordance with section 48(4) of the said Act with such organisations as appear to them to be representative of interests likely to be substantially affected by the Regulations:

Title and commencement

1. These Regulations may be cited as the Colours in Food Regulations 1995, and

shall come into force on 1st January 1996.

Interpretation

2. —(1) In these Regulations, unless the context otherwise requires—
"the Act" means the Food Safety Act 1990;
the noun "colour" means a food additive which is used or intended to be used for the primary purpose of adding or restoring colouring in a food, and includes —
- (a) any natural constituent of food and any natural source not normally consumed as food as such and not normally used as a characteristic ingredient of food, and
 - (b) any preparation obtained from food or from any other natural source material, by, in either case—
 - (i) physical extraction,
 - (ii) chemical extraction, or
 - (iii) physical and chemical extractionwhich results in the selective extraction of the pigment relative to the nutritive or aromatic constituent,
- but does not include—
- (aa) any food (including one in dried or concentrated form),
 - (bb) any flavouring,
- used, in either case, in the manufacture of any compound food because of its aromatic, sapid or nutritive properties albeit that it may also be used secondarily to add or restore colouring to such compound food, and
- (cc) any colour when it is used only for colouring any inedible external part of a food;
- "Directive 94/36/EC" means European Parliament and Council Directive 94/36/EC^[2] on colours for use in foodstuffs;
- "Directive 95/45/EC" means Commission Directive 95/45/EC^[3] laying down specific criteria of purity concerning colours for use in foodstuffs;
- "food" means food sold, or intended for sale, for human consumption, and in regulation 8 and for the purposes of regulation 11 includes a colour;
- "food additive" means any substance not normally consumed as a food in itself and not normally used as a characteristic ingredient of food, whether or not it has nutritive value, the intentional addition of which to food for a technological purpose in the manufacture, processing, preparation, treatment, packaging, transport or storage of such food results, or may reasonably be expected to result, in it or its by-products becoming directly or indirectly a component of such foods;
- "infants" means children under the age of twelve months;
- "member State" means a member State of the European Community;
- "permitted colour" means any colour listed in Schedule 1 which satisfies the specific purity criteria for that colour set out in the annex to Directive 95/45/EC;
- "processed" in relation to any food, means having undergone any treatment resulting in a substantial change in the original state of the food, but does not include dividing, parting, severing, boning, mincing, skinning, paring, peeling, grinding, cutting, cleaning, trimming, deep-freezing, freezing, chilling, milling, husking, packing or unpacking, and "unprocessed" shall be construed accordingly;
- "sell" includes possess for sell, and offer, expose or advertise for sale, and
- "sale" and "sold" shall be construed accordingly;
- "young children" means children aged between one and three years,

and other expressions used in these Regulations and in Directive 94/36/EC have, in so far as the context admits, the same meaning as they bear in that Directive. (2) Any

reference in these Regulations to a Community instrument is a reference to it as amended, modified or otherwise adapted.

(3) Any reference in these Regulations to a numbered regulation or Schedule shall, unless the context otherwise requires, be construed as a reference to the regulation or Schedule bearing that number in these Regulations, and including in the case of a Schedule any note thereto.

(4) Any reference in these Regulations or in a Schedule thereto to—

(a) a maximum level of permitted colour in or on a food is to the maximum amount, in milligrams, of colouring principle contained in that permitted colour per kilogram or, as the case may be, per litre of food which is ready to eat having been prepared according to any instructions for use;

(b) *quantum satis*, means that no maximum level of permitted colour in or on a corresponding food is specified but that in or on such food a permitted colour may be used in accordance with good manufacturing practice at a level not higher than is necessary to achieve the intended purpose and provided that such use does not mislead the consumer.

Use of colours in or on food

3.—(1) No person shall use in or on any food any colour other than a permitted colour.

(2) No person shall use any permitted colour in or on any food listed in Schedule 2 except in accordance with paragraph 3(a) below.

(3) Subject to paragraph (4) below and to regulations 4, 5 and 6, no person shall use any permitted colour in or on any food unless—

(a) the food is one listed—

(i) in Column 1 of Schedule 3, in which case there may be used in or on such food any permitted colour which is listed in relation to it in Column 2 of Schedule 3 in an amount not exceeding the maximum level for such permitted colour in or on such food as listed in Column 3 of Schedule 3; or

(ii) in Column 2 of Schedule 4, in which case there may be used in or on such food any permitted colour which is listed in relation to it in Column 1 of Schedule 4 in an amount not exceeding the maximum level for such permitted colour in or on such food as listed in Column 3 of Schedule 4; or

(iii) in Part III of Schedule 5, in which case there may be used in or on such food any of the permitted colours listed in Parts I or II of Schedule 5 in accordance with the conditions contained in that Schedule governing the use of such colours in or on such foods;

(b) the food is not listed in either Schedule 2 or in Column 1 of Schedule 3, in which case there may be used in or on such food any one or more of the permitted colours listed in Part I of Schedule 5 up to an amount (in each case) of *quantum satis*.

(4) No person shall use any permitted colour listed in Column 1 of Schedule 4 in or on any food other than the food or foods listed in relation to that permitted colour in Column 2 of that Schedule.

Health marking etc. of certain meat and meat products

4. No person shall use any colour for the purpose of any health marking as provided for in the Fresh Meat (Hygiene and Inspection) Regulations 1995^[4] or any

other marking required on any meat product, other than the permitted colours—

- (a) E 155 Brown HT;
- (b) E 133 Brilliant Blue FCF;
- (c) E 129 Allura Red AC, or
- (d) an appropriate mixture of (b) and (c) above.

Use of colours on eggshells

5. No person shall use any colour for—

- (a) the decorative colouring, or
 - (b) the stamping (as provided for in Regulation (EEC) No. 1274/91^[5], introducing detailed rules for implementing Regulation (EEC) No. 1907/90 on certain marketing standards for eggs),
- of eggshells, other than a permitted colour.

Use of colours in or on compound foods

6.—(1) Subject to paragraph (3) below, any food in or on which a permitted colour is used without contravening any of the provisions of paragraphs (2), (3) or (4) of regulation 3 may itself be used as an ingredient in a compound food in or on which the use of such colour is not otherwise permitted, and the presence in or on that compound food of such colour as a result of its containing such an ingredient shall not constitute a contravention of any of the provisions of those paragraphs of regulation 3.

(2) There may be used in or on a food any permitted colour the use of which would otherwise constitute a contravention of any of the provisions of paragraphs (2), (3) or (4) of regulation 3, where such a food is destined to be used solely in the preparation of a compound food and the resulting presence in or on that compound food of such colour does not itself constitute a contravention of any of the provisions of those paragraphs of regulation 3.

(3) Paragraph 1 above shall not apply in the case of any compound food listed in Schedule 2.

Sale of colours and food containing colours

7.—(1) No person shall sell any colour for use in or on food unless such colour is a permitted colour.

(2) No person shall sell directly to the consumer any colour other than a specified permitted colour.

(3) For the purposes of paragraph (2) above, a "specified permitted colour" shall be any permitted colour other than—

- (a) E 123 Amaranth;
- (b) E 127 Erythrosine;
- (c) E 128 Red 2G;
- (d) E 154 Brown FK;
- (e) E 160b Annatto, bixin, norbixin;
- (f) E 161g Canthaxanthin;
- (g) E 173 Aluminium, and
- (h) E 180 Litholrubine BK.

(4) No person shall sell any food having in it or on it any added colour other than a permitted colour that has been used in or on that food without contravening any of the provisions of regulations 3, 4, 5 and 6.

Condemnation of food

8. Where any food is certified by a food analyst as being food which it is an offence against these Regulations to sell, that food may be treated for the purposes of section 9 of the Act (under which a food may be seized and destroyed on the order of a justice of the peace) as failing to comply with food safety requirements, and section 8(3) shall apply for the purposes of these Regulations as it applies for the purposes of the Act.

Offences, penalties and enforcement

9.—(1) If any person contravenes or fails to comply with any of the provisions of these Regulations he shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Where an offence under these Regulations is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of the offence and be liable to be proceeded against and punished accordingly.

(3) Subject to paragraph (4) below, each food authority shall enforce and execute these Regulations in its area.

(4) In this regulation "food authority" does not include—

- (a) the council of a district in a non-metropolitan county in England except where the county functions have been transferred to that council pursuant to a structural change;
- (b) until 1st April 1996, the council of a district in Wales; or
- (c) the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and the Middle Temple).

Defence in relation to exports

10. In any proceedings for an offence under these Regulations it shall be a defence for the person charged to prove—

- (a) that the food or, as the case may be, the colour in respect of which the offence is alleged to have been committed was intended for export to a country which has legislation analogous to these Regulations and that such food or colour complies with that legislation; and
- (b) in the case of export to another member State, that the legislation complies with Council Directive 89/107/EEC^[6] on the approximation of the laws of the Member States concerning food additives authorised for use in foodstuffs intended for human consumption, Directive 94/36/EC and Directive 95/45/EC.

Application of various provisions of the Food Safety Act 1990

11. The following provisions of the Act shall apply for the purposes of these Regulations as they apply for the purposes of section 8, 14 or 15 of the Act and, unless the context otherwise requires, any reference in them to the Act 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);
- (e) section 22 (defence of publication in the course of business);
- (f) section 30(8) (which relates to documentary evidence);
- (g) section 33 (obstruction etc. of officers);
- (h) section 36 (offences by bodies corporate);
- (i) section 44 (protection of officers acting in good faith).

Revocations and Amendments

12.—(1) The Regulations specified in Columns 1 and 2 of Schedule 6 shall be revoked to the extent specified in Column 3 of that Schedule.

(2) In both the Specified Sugar Products Regulations 1976^[7] and the Specified Sugar Products (Scotland) Regulations 1976^[8]—

- (a) in paragraph (3)(d) of regulation 5 (labelling and description of specified sugar products), for the words "colouring matter", in both cases where they occur, there shall be substituted, in each case, the word "colour";
- (b) in sub-paragraph (b) of regulation 9 (permitted additional ingredients in specified sugar products), for the words "colouring matter", in both cases where they occur, there shall be substituted, in each case, the word "colour".

(3) In both the Jam and Similar Products Regulations 1981^[9] and the Jam and Similar Products (Scotland) Regulations 1981^[10]—

- (a) in paragraph (1) of regulation 2 (interpretation), for the definition of "permitted colouring matter" there shall be substituted the following definition

—
""permitted colour" means any colour in so far as its use is permitted by the Colours in Food Regulations 1995;" , and

- (b) in Part III of Schedule 2 (permitted additional ingredients), for the words "permitted colouring matters" in Column 1 there shall be substituted the words "permitted colours".

(4) In the Meat Products and Spreadable Fish Products Regulations 1984^[11], in paragraph (1) of regulation 2 (interpretation), in the definition of "additive" for the words "the Colouring Matter in Food Regulations 1973" there shall be substituted the words "the Colours in Food Regulations 1995".

(5) In the Meat Products and Spreadable Fish Products (Scotland) Regulations 1984^[12], in paragraph (1) of regulation 2 (interpretation), in the definition of "additive" for the words "the Colouring Matter in Food (Scotland) Regulations 1973" there shall be substituted the words "the Colours in Food Regulations 1995".

(6) In the Food Additives Labelling Regulations 1992^[13], in Schedule 1 (categories of food additives)—

- (a) in Part I (list of food additives), for item 1 there shall be substituted the following item—

"1. Colour." ;

- (b) in Part II (supplementary), for subparagraph (a) there shall be substituted the following subparagraph—

"(a) "colour" means any substance which is a colour for the purposes of the Colours in Food Regulations 1995;" .

(7) In the Fresh Meat (Hygiene and Inspection) Regulations 1995, in paragraph 6 of Schedule 12 (health marking), for the words "the Colouring Matter in Food Regulations 1973" there shall be substituted the words "the Colours in Food Regulations 1995".

Transitional provision and exemption

13.—(1) In any proceedings for an offence against these Regulations it shall be a defence to prove that—

(a)

(i) the act was committed before 30th June 1996, or

(ii) the act was that of selling a colour or a food which, in either case, was put on the market or labelled before 30th June 1996; and

(b) the matters constituting the offence would not have constituted an offence under any Regulations now revoked or amended by these Regulations if those Regulations had been in operation (in the case of Regulations now being amended, as if such amendments had not been made) when the act was committed or the colour or, as the case may be, the food was put on the market or labelled.

(2) These Regulations shall not apply to any colour or, as the case may be, food which—

(a) is brought into Great Britain before 30th June 1996 from a member State in which it was lawfully produced and sold or in which it was in free circulation and lawfully sold; and

(b) is suitably labelled to give the nature of the colour or, as the case may be, the food.

(3) For the purpose of paragraph (2) above, "free circulation" shall be construed in accordance with Article 9.2 of the Treaty establishing the European Community.

Angela Browning

Parliamentary Secretary, Ministry of Agriculture, Fisheries and Food

3rd December 1995

Signed by authority of the Secretary of State for Health:

Cumberlege

Parliamentary Under Secretary of State, Department of Health

17th November 1995

Signed by authority of the Secretary of State for Wales:

Rod Richards

Parliamentary Under Secretary of State, Welsh Office

23rd November 1995

Lindsay

Parliamentary Under Secretary of State, Scottish Office

21st November 1995

Notes:

[1] 1990 c. 16; "the Ministers" is defined in section 4(1) of the Act; section 6(4)(a) of the

Act was amended by the Deregulation and Contracting Out Act 1994 (c. 40), Schedule 9, paragraph 6. [back](#)

[2] OJ No. L237, 10.9.94, p. 13. [back](#)

[3] OJ No. L226, 22.9.95, p. 1. [back](#)

[4] S.I. 1995/539, to which there is an amendment not relevant to these Regulations. [back](#)

[5] OJ No. L121, 16.5.91, p. 11. [back](#)

[6] OJ No. L40, 11.2.89, p. 27. [back](#)

[7] S.I. 1976/509; relevant amending instrument is S.I. 1980/1849. [back](#)

[8] S.I. 1976/946; relevant amending instrument is S.I. 1980/1889. [back](#)

[9] S.I. 1981/1063, to which there are amendments not relevant to these Regulations. [back](#)

[10] S.I. 1981/1320, to which there are amendments not relevant to these Regulations. [back](#)

[11] S.I. 1984/1566, to which there are amendments not relevant to these Regulations. [back](#)

[12] S.I. 1984/1714, to which there are amendments not relevant to these Regulations. [back](#)

[13] S.I. 1992/1978. [back](#)