

2009 No. 3235

FOOD

The Food Enzymes Regulations 2009

Made - - - - *7th December 2009*

Laid before Parliament *11th December 2009*

Coming into force - - *20th January 2010*

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 17(2), 26(1) and (3), and 48(1) of the Food Safety Act 1990(a), (the 1990 Act) and now vested in him(b).

In accordance with section 48(4A) of the 1990 Act, he has had regard to relevant advice given by the Food Standards Agency.

In so far as these Regulations cannot be made under the powers in the 1990 Act cited above, the Secretary of State makes these Regulations as a Minister designated(c) for the purposes of section 2(2) of the European Communities Act 1972(d) in relation to measures relating to the description of, and other requirements relating to, spirit drinks.

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(e), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

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- (a) 1990 c. 16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c.28), “the 1999 Act”. Section 48 was also amended by S.I. 2004/2990. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c.40), Schedule 6 to the 1999 Act, S.I. 2004/2990 and S.I. 2004/3279.
- (b) 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 paragraph 8 of Schedule 5 to the Food Standards Act 1999 (1999 c. 28). Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32). Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46) as read with section 40(2) of the 1999 Act.
- (c) S.I. 1989/1327, to which there are amendments not relevant to these Regulations.
- (d) 1972 c.68.
- (e) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Commission Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468 with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p.14).

Title, commencement and extent

1.—(1) These Regulations may be cited as the Food Enzymes Regulations 2009 and come into force on 20th January 2010.

(2) Regulations 1 and 11 extend to the United Kingdom and regulations 2 to 10 apply in relation to England only.

Interpretation

2.—(1) In these Regulations —

“the Act” means the Food Safety Act 1990;

“the EC Regulation” means Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation (EC) No 258/97(a);

“food authority” does not include the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and the Middle Temple) nor a port health authority;

“port health authority” means —

- (a) in relation to the London port health district (within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984(b) by section 7(1) of that Act), the Common Council of the City of London; and
- (b) in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984, a port health authority for that district constituted by order under section 2(4) of that Act.

(2) Any other expression used in these Regulations and in the EC Regulation has the same meaning in these Regulations as it bears in the EC Regulation.

(3) Unless indicated otherwise, any reference to a numbered Article is a reference to the Article so numbered in the EC Regulation.

Offences, penalties and savings

3.—(1) A person who contravenes or fails to comply with any of the provisions of the EC Regulation specified in paragraph (2) as read with the transitional arrangements contained in Article 18 and Article 24 is guilty of an offence.

(2) The provisions mentioned in paragraph (1) are —

- (a) Article 4 (restriction on placing on the market and use of food enzymes not on the list provided for in Article 17);
- (b) Article 5 (prohibition on placing on the market of non-compliant food enzymes or foods containing such enzymes);
- (c) Article 10(1) (requirements for labelling of food enzymes and preparations not intended for sale to the final consumer);
- (d) Article 12(1) (requirements for labelling of food enzymes and preparations intended for sale to the final consumer);
- (e) Article 14(1) and (2) (requirement to provide specified information to the Commission).

(3) Anyone convicted of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(a) OJ No. L354, 31.12.2008, p.7.

(b) 1984 c. 22.

Enforcement and competent authorities

4. It shall be the duty of each food authority within its area and each port health authority within its district to execute and enforce these Regulations and the EC Regulation.

Application of various sections 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 is to be construed as a reference to these Regulations —

- (a) section 20 (offences due to fault of another person);
- (b) section 21 (defence of due diligence)(a), with the modification that —
 - (i) subsections (2) to (4) shall apply in relation to an offence under regulation 3(1) as they apply in relation to an offence under section 14 or 15, and
 - (ii) in subsection (4) the references to “sale” are deemed to include references to “placing on the market”;
- (c) section 30(8) (which relates to documentary evidence);
- (d) section 35(1) (punishment of offences)(b), in so far as it relates to offences under section 33(1) as applied by paragraph (3)(b);
- (e) section 35(2) and (3)(c), in so far as it relates to offences under section 33(2) as applied by paragraph (3)(c);
- (f) section 36 (offences by bodies corporate);
- (g) section 36A (offences by Scottish partnerships)(d).

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the reference in subsection (1) to the Act is to be construed as including references to the EC Regulation.

(3) 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 is to be construed as including a reference to the EC Regulation and these Regulations —

- (a) section 3 (presumption that food is intended for human consumption) with the modification that the references to “sold” and “sale” are deemed to include references to “placed on the market” and “placing on the market” respectively;
- (b) section 33(1) (obstruction of officers);
- (c) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above” is deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (b);
- (d) section 44 (protection of officers acting in good faith).

(4) Section 34 of the Act (time limit for prosecutions) applies to offences under regulation 3 as it applies to offences punishable under section 35(2) of the Act.

Condemnation of Food

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

(a) Section 21(2) was amended by S.I. 2004/3279.

(b) Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c.44), Schedule 26, paragraph 42, from a date to be appointed.

(c) Section 35(3) was amended by S.I. 2004/3279.

(d) Section 36A was inserted by the Food Standards Act 1999 (1999 c.28), Schedule 5, paragraph 16.

Amendment of the Food Labelling Regulations

7.—(1) The Food Labelling Regulations 1996(a) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 2(1) (interpretation) —

(a) following the definition of “follow-on formula” insert the following definition —

““food enzyme” has the meaning that it bears in Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes(b);”; and

(b) in the definition of “ingredient”, after the expression “any additive” insert the expression “, any food enzyme”.

(3) In regulation 14 (names of ingredients) after paragraph (9) insert the following as paragraph (9A) —

“(9A) a food enzyme other than one referred to in regulation 17(b) or (c) shall be identified by the appropriate category in Schedule 4 followed by the specific name of that enzyme.”.

(4) In regulation 17 (ingredients which need not be named) —

(a) in paragraphs (b) and (c) in each case after the expression “any additive” insert “or food enzyme”; and

(b) in paragraph (d) after the expression “an additive” insert “or food enzyme”;

(5) In the heading to Schedule 4, for the word “additives” substitute “ingredients”.

Amendment of the Caseins and Caseinates Regulations 1985

8. In the Schedule to the Caseins and Caseinates Regulations 1985(c), in column 2 of Part II (technological adjuvants and bacterial cultures) after the expressions “rennet” and “other milk-coagulating enzymes” in each case add the expression “meeting the requirements of Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes”.

Amendment of the Fruit Juices and Fruit Nectars (England) Regulations 2003

9. In Schedule 4 (permitted treatments and additional substances) to the Fruit Juices and Fruit Nectars (England) Regulations 2003(d), after the expressions “Pectolytic enzymes”, “Proteolytic enzymes” and “Amylolytic enzymes” in paragraphs 4, 5 and 6 respectively in each case add the expression “meeting the requirements of Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes”.

Amendment of the Novel Food and Novel Food Ingredients Regulations 1997

10. In regulation 2(1) (interpretation) of the Novel Foods and Novel Food Ingredients Regulations 1997(e), for the definition of “Regulation (EC) No 258/97” substitute the following definition —

““Regulation (EC) No 258/97” means Regulation (EC) No 258/97 of the European Parliament and of the Council concerning novel foods and food ingredients(f) as last amended by Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes;”.

(a) S.I. 1996/1499, as amended by S.I. 2004/2824. There are other amending S.I.s but none is relevant to this instrument.

(b) OJ No. L354, 31.12.2008, p.7.

(c) S.I. 1985/2026, as amended by S.I. 1989/2321, S.I. 1990/2486, S.I. 1991/1476, S.I. 1992/2596 and S.I. 2005/2626.

(d) S.I. 2003/1564, as amended by S.I. 2005/2626.

(e) S.I. 1997/1335, as amended by S.I. 1999/1756, S.I. 1999/3182, S.I. 2000/253, S.I. 2000/768 and S.I. 2004/2335.

(f) OJ No. L43, 14.2.1997, p.1, as amended by Regulations (EC) No 1829/2003 (OJ No. L268, 18.10.2003, p.1), No 1882/2003 (OJ No. L284, 31.10.2003, p.1) and No 1332/2008 (OJ No. L354, 31.12.2008, p.7).

Amendment of the Spirit Drinks Regulations 2008

11. In the table in Part 2 of Schedule 2 to the Spirit Drinks Regulations 2008^(a), at the end of the entry in column 2 that appears opposite the entry “Article 9(9)” in column 1, add the words “as last amended by Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes”.

Signed by authority of the Secretary of State for Health

7th December 2009

Gillian Merron
Minister of State,
Department of Health

^(a) S.I. 2008/3206.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations provide for the execution and enforcement in England of Regulation (EC) No. 1332/2008 of the European Parliament and of the Council on food enzymes and amending Council Directive 83/417/EEC, Council Regulation (EC) No 1493/1999, Directive 2000/13/EC, Council Directive 2001/112/EC and Regulation (EC) No 258/97 (OJ No. L354, 31.12.2008, p.7), (“the EC Regulation”).

2. The Regulations provide that it is an offence —

- (a) once the list of food enzymes mentioned in Article 17 of the EC Regulation` has been adopted, to place on the market or use as food enzymes any that are not on that list (*regulation 3(2)(a)*);
- (b) to place on the market a food enzyme (or any food containing such an enzyme) that is not compliant with the EC Regulation and its implementing measures (*regulation 3(2)(b)*);
- (c) to fail to label food enzymes or enzyme preparations in accordance with the relevant requirements for business to business transactions (*regulation 3(2)(c)*) or for sales to the final consumer (*regulation 3(2)(d)*); or
- (d) to fail to provide certain technical information to the Commission in specified circumstances (*regulation 3(2)(e)*).

3. These Regulations also —

- (a) designate the authorities having the duty to enforce these Regulations and the EC Regulation (*regulation 4*);
- (b) apply certain specified provisions of the Food Safety Act 1990 for the purpose of these Regulations (*regulation 5*); and
- (c) provide that where food does not comply with these Regulations such that it would be an offence to place it on the market, it may be treated as failing to comply with food safety requirements for the purposes of seizure and destruction under section 9 of the Food Safety Act 1990 (*regulation 6*).

4. The Regulations make consequential amendments —

- (a) in relation to England only, to the Food Labelling Regulations 1996 (*regulation 7*), the Caseins and Caseinates Regulations 1985 (*regulation 8*) and the Novel Foods and Novel Food Ingredients Regulations 1997 (*regulation 10*);
- (b) to the Fruit Juices and Fruit Nectars (England) Regulations 2003 (*regulation 9*); and
- (c) in relation to the whole of the United Kingdom, to the Spirit Drinks Regulations 2008 (*regulation 11*).

5. A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Food Composition and Labelling Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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STATUTORY INSTRUMENTS

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