

2009 No. 435

FOOD

The Food Enzymes (Scotland) Regulations 2009

Made - - - - *10th December 2009*

Laid before the Scottish Parliament *11th December 2009*

Coming into force - - *20th January 2010*

The Scottish Ministers make 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), and all other powers enabling them to do so(b).

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

There has been 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(c).

Citation, extent and commencement

1. These Regulations may be cited as the Food Enzymes (Scotland) Regulations 2009, extend to Scotland only and come into force on 20th January 2010.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

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- (a) 1990 c.16: section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; sections 16, 17 and 48 were amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c.28) (“the 1999 Act”); section 17 was also amended by paragraph 12 of Schedule 5 to the 1999 Act and section 48 was also amended by (i) paragraph 21 of Schedule 5 to the 1999 Act and (ii) S.I. 2004/2990; section 26(3) was amended by Schedule 6 to the 1999 Act, and is read with section 45 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6); amendments made by Schedule 5 to the 1999 Act shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Insofar as not so transferred and insofar as relating to food (including drink) including the primary production of food, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).
- (b) Section 48(4A) was inserted by section 40(1) of, and paragraph 21 of Schedule 5 to, the 1999 Act.
- (c) O.J. No. L 31, 1.2.02, 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 (O.J. No. L 188, 18.7.2009, p.14).

“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).

(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); and
- (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.

Enforcement and competent authorities

4. It shall be the duty of each food authority within its area 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)(b), 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 (selling food not of the nature or substance or quality demanded) or 15 (falsely describing or presenting food); 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), in so far as it relates to offences under section 33(1) as applied by paragraph (3)(b);

(a) O.J. No. L 354, 31.12.08, p.7.

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

- (e) section 35(2) and (3)(a), 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); and
- (g) section 36A (offences by Scottish partnerships)(b).

(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) (offence of furnishing false or misleading information) 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); and
- (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(1) 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 food may be seized and destroyed) as failing to comply with food safety requirements.

Amendment of the Food Labelling Regulations 1996

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

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

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

““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(d);”;

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

(3) In regulation 14 (names of ingredients) after paragraph (9) insert—

“(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 “any additive” insert “or food enzyme”; and

(b) in paragraph (d) after “an additive” insert “or food enzyme”.

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

(b) Section 36A was inserted by section 40 of, and Schedule 5 to, the Food Standards Act 1999 (c.28).

(c) S.I. 1996/1499; relevantly amended by S.I. 1998/1398, 1999/747, 1136 and 1483 and S.S.I. 2000/83, 2002/524, 2003/578, 2004/395 and 472, 2005/456 and 222, 2007/534 and 2008/129, 180 and 395.

(d) O.J. No. L 354, 31.12.2008, p.7.

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

Amendment of the Caseins and Caseinates Regulations 1985

8. In the Schedule to the Caseins and Caseinates Regulations 1985(a), in column 2 of Part II (technological adjuvants and bacterial cultures) after “rennet” and “other milk-coagulating enzymes” in each case add “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 (Scotland) Regulations 2003

9. In Schedule 4 (permitted treatments and additional substances) to the Fruit Juices and Fruit Nectars (Scotland) Regulations 2003(b), after “Pectolytic enzymes”, “Proteolytic enzymes” and “Amylolytic enzymes” in paragraphs 4, 5 and 6 respectively in each case add “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(c), for the definition of “Regulation (EC) No 258/97” substitute—

““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(d) as last amended by Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes;”.

SHONA ROBISON

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
10th December 2009

(a) S.I. 1985/2026, as amended by S.S.I. 2004/472. There are other amending instruments but none are relevant to this instrument.
(b) S.S.I. 2003/293, as amended by S.S.I. 2005/616.
(c) S.I. 1997/1335, as amended by S.I. 1999/1756, S.S.I. 2000/62 and 83, and S.S.I. 2004/432.
(d) O.J. No. L43, 14.2.1997, p.1, as amended by Regulations (EC) No. 1829/2003 (O.J. No. L268, 18.10.2003, p.1), No. 1882/2003 (O.J. No. L 284, 31.10.2003, p.1) and No. 1332/2008 (O.J. No. L 354, 31.12.2008, p.7).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the execution and enforcement in Scotland 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 (“the EC Regulation”).

These 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)).

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).

The Regulations make consequential amendments to the Food Labelling Regulations 1996 (regulation 7), the Caseins and Caseinates Regulations 1985 (regulation 8), the Novel Foods and Novel Food Ingredients Regulations 1997 (regulation 10) and the Fruit Juices and Fruit Nectars (Scotland) Regulations 2003 (regulation 9).

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency (Scotland), 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.

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