



CYNULLIAD CENEDLAETHOL CYMRU

NATIONAL ASSEMBLY FOR WALES

OFFERYNNAU STATUDOL

STATUTORY INSTRUMENTS

**2006 Rhif 1851 (Cy.194)**

**2006 No. 1851 (W.194)**

**BWYD, CYMRU**

**FOOD, WALES**

**Rheoliadau Cafu-caffa mewn Bwyd  
(Cymru) 2006**

**The Kava-kava in Food (Wales)  
Regulations 2006**

**NODYN ESBONIADOL**

**EXPLANATORY NOTE**

*(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)*

*(This note is not part of the Regulations)*

Mae'r Rheoliadau hyn (yn ddarostyngedig i eithriadau mewn amgylchiadau penodol sy'n ymwneud â mewnfurion o Wladwriaethau'r AEE) yn gwahardd gwerthu, meddu gyda'r bwriad o werthu, cynnig, arddangos neu hysbysebu ar gyfer gwerthu, a mewnfurio i Gymru o'r tu allan i'r Deyrnas Unedig neu gludo i Gymru o unrhyw ran arall o'r Deyrnas Unedig, unrhyw fwyd sydd wedi'i wneud o Gafa-caffa, neu sy'n cynnwys Cafu-caffa (sef planhigyn neu ran o blanhigyn, neu ddarn o blanhigyn o'r fath, sy'n perthyn i'r rhywogaeth *Piper methysticum*) (rheoliad 3). Gellir trin unrhyw fwyd o'r fath fel bwyd sy'n anaddas i'w fwyta gan bobl a gall fod yn agored i'w atafaelu a'i ddinistrio (rheoliad 5(3)).

These Regulations (subject to exceptions in certain circumstances in relation to imports from EEA States) prohibit the sale, possession for sale, offer, exposure or advertisement for sale, and the importation into Wales from outside the United Kingdom or the transportation into Wales from any other part of the United Kingdom, of any food consisting of, or containing, Kava-kava (being a plant or part of a plant, or an extract from such a plant, belonging to the species *Piper methysticum*) (regulation 3). Any such food may be treated as being unfit for human consumption and be liable to be seized and destroyed (regulation 5(3)).

Mae'r Rheoliadau yn creu tramgwydd o ran eu torri ac maent yn darparu ar gyfer eu gorfodi gan awdurdodau bwyd (rheoliad 4). Maent hefyd yn creu rhagdybiaeth, oni bai bod prawf i'r gwrthwyneb, pan fo rhan o swp, lot neu lwyth o fwyd yn torri'r Rheoliadau, bernir bod y swp, lot neu lwyth cyfan yn torri'r Rheoliadau (rheoliad 6).

The Regulations create an offence in relation to breaches and provide for enforcement by food authorities (regulation 4). They also create a presumption, unless it is proved to the contrary, that where part of a batch, lot or consignment of food contravenes the Regulations, the whole batch, lot or consignment is deemed to contravene the Regulations (regulation 6).

Hysbyswyd y Comisiwn Ewropeaidd o ddrafft o'r Rheoliadau yn unol ag Erthygl 8 o Gyfarwydddeb Senedd Ewrop a'r Cyngor 98/34/EC sy'n gosod gweithdrefn ar gyfer darparu gwybodaeth ym maes safonau a rheoliadau technegol a rheolau gwasanaethau y Gymdeithas Wybodaeth (OJ Rhif L204, 21.7.1998, t.37), fel y'i diwygiwyd gan Gyfarwydddeb Senedd Ewrop a'r Cyngor 98/48/EC (OJ Rhif L217, 5.8.1998, t.18). Drwy amryfusedd, ni hysbyswyd ef o'r Rheoliadau Cafu-caffa mewn Bwyd (Cymru) 2002 ac fe'u dirymwyd wedi hynny gan Reoliadau Cafu-caffa mewn Bwyd (Cymru) (Dirymu)

A draft of the Regulations was notified to the European Commission in accordance with Article 8 of the European Parliament and Council Directive 98/34/EC laying down a procedure for the provision of information in the field of technical standards and regulations and of rules of Information Society services (OJ No. L204, 21.7.1998, p.37), as amended by the European Parliament and Council Directive 98/48/EC (OJ No. L217, 5.8.1998, p.18). The Kava-kava in Food (Wales) Regulations 2002 were not so notified, in error, and were subsequently revoked by the Kava-kava in Food (Wales) (Revocation)

2003. Mae'r Rheoliadau hyn yn cymryd lle Rheoliadau 2002.

Paratowyd Arfarniad Effaith Rheoliadol a'i osod yn Llyfrgell Cynulliad Cenedlaethol Cymru a gellir cael copïau oddi wrth yr Asiantaeth Safonau Bwyd, Llawr 11, Southgate House, Caerdydd, CF10 1EW.

Regulations 2003. These Regulations replace the 2002 Regulations.

A Regulatory Appraisal has been prepared and placed in the Library of the National Assembly for Wales and copies can be obtained from the Food Standards Agency, 11th Floor, Southgate House, Cardiff, CF10 1EW.

## 2006 Rhif 1851 (Cy.194)

## 2006 No. 1851 (W.194)

## BWYD, CYMRU

## FOOD, WALES

Rheoliadau Cafa-cafa mewn Bwyd  
(Cymru) 2006The Kava-kava in Food (Wales)  
Regulations 2006*Wedi'u gwneud* 11 Gorffennaf 2006*Made* 11 July 2006*Yn dod i rym* 14 Gorffennaf 2006*Coming into force* 14 July 2006

Mae Cynulliad Cenedlaethol Cymru, drwy arfer y pwerau a roddwyd gan adrannau 16(1)(a), (e) ac (f), 18(1)(c), 26(1) a (3) a 48(1) o Ddeddf Diogelwch Bwyd 1990(1) ac a freinir ynddo bellach(2), ac ar ôl rhoi sylw yn unol ag adran 48(4A) o'r Ddeddf honno i gyngor perthnasol a roddir gan yr Asiantaeth Safonau Bwyd, ac ar ôl ymgynghori fel sy'n ofynnol gan Erthygl 9 o Reoliad (EC) Rhif 178/2002 Senedd Ewrop a'r Cyngor(3), drwy hyn yn gwneud y Rheoliadau canlynol:

The National Assembly for Wales, in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 18(1)(c), 26(1) and (3) and 48(1) of the Food Safety Act 1990(1) and now vested in it(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(3), hereby makes the following Regulations:

**Enwi, cychwyn a chymhwys****1. O ran y Rheoliadau hyn-**

- (a) eu henw yw Rheoliadau Cafa-cafa mewn Bwyd (Cymru) 2006;
- (b) deuant i rym ar 14 Gorffennaf 2006;
- (c) byddant yn gymwys o ran Cymru.

**Title, commencement and application****1. These Regulations-**

- (a) are called the Kava-kava in Food (Wales) Regulations 2006;
- (b) come into force on 14 July 2006;
- (c) apply in relation to Wales.

**Dehongli****2. Yn y Rheoliadau hyn-**

mae i "awdurdod bwyd" yr un ystyr a roddir i ("*food authority*") yn adran 5(1A) a 3(a) a (b) o'r Ddeddf;

ystyr "awdurdod iechyd porthladd" ("*port health authority*") yw o ran unrhyw ardal iechyd porthladd

**Interpretation****2. In these Regulations-**

"the Act" ("*y Ddeddf*") means the Food Safety Act 1990;

"EEA State" ("*Gwladwriaeth AEE*") means a member State, Norway, Iceland or Liechtenstein;

(1) 1990 p.16. Diwygiodd O.S. 2004/2990 y diffiniad o "food" yn adran 1 o'r Ddeddf ac fe ddiwygiodd y gofynion ymgynghori yn adran 48 o'r Ddeddf er mwyn bodloni gofynion Rheoliad (EC) Rhif 178/2002.

(2) Trosglwyddwyd swyddogaethau'r Ysgrifennydd Gwladol i'r graddau y maent yn arferadwy o ran Cymru i Gynulliad Cenedlaethol Cymru gan Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672), fel y caiff ei ddarllen gydag adran 40(3) o Ddeddf 1999.

(3) OJ Rhif L31, 1.2.2002, t.1; sy'n gosod egwyddorion cyffredinol a gofynion cyfraith fwyd, yn sefydlu Awdurdod Diogelwch Bwyd Ewrop ac yn gosod gweithdrefnau mewn materion sy'n ymwneud â diogelwch bwyd.

(1) 1990 c.16. S.I. 2004/2990 amended the definition of "food" in section 1 of the Act and amended the consultation requirements in section 48 of the Act in order to meet the requirements of Regulation (EC) No.178/2002.

(2) Functions of the Secretary of State 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.

(3) OJ No. L31, 1.2.2002, p.1; 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.

a gyfansoddwyd drwy orchymyn o dan adran 2(3) o Ddeddf Iechyd y Cyhoedd (Rheoli Afiechydon) 1984(1), awdurdod iechyd porthladd ar gyfer yr ardal honno a gyfansoddwyd drwy orchymyn o dan adran 2(4) o'r Ddeddf honno;

ystyr "Cafa-cafa" ("*Kava-kava*") yw planhigyn, neu unrhyw ran o blanhigyn neu ddarn o blanhigyn, sy'n perthyn i'r rhywogaeth Piper methysticum;

mae i "cylchrediad rhydd mewn Aelod-wladwriaethau" yr un ystyr â ("*free circulation in member States*") yn Erthygl 23.2, fel y'i darllenir ynghyd ag Erthygl 24, o'r Cytuniad a sefydlodd y Gymuned Ewropeaidd;

ystyr "y Ddeddf" ("*the Act*") yw Ddeddf Diogelwch Bwyd 1990;

ystyr "Gwladwriaeth AEE" ("*AEE State*") yw Aelod-wladwriaeth, Norwy, Gwlad yr Iâ neu Liechtenstein;

### **Gwaharddiad ar werthu etc. bwyd sydd wedi'i wneud o Gafa-cafa neu sy'n ei gynnwys**

3.-(1) Yn ddarostyngedig i baragraff (2), ni chaiff unrhyw berson-

- (a) gwerthu, neu
- (b) meddu ar gyfer gwerthu, neu gynnig, arddangos neu hysbysebu ar gyfer gwerthu, neu
- (c) mewnforio i Gymru o wlad y tu allan i'r Deyrnas Unedig neu gludo i Gymru o unrhyw ran arall o'r Deyrnas Unedig unrhyw fwyd sydd wedi'i wneud o Gafa-cafa neu sy'n ei gynnwys.

(2) Ni fydd y gwaharddiad a osodir gan baragraff (1) yn gymwys os yw'r bwyd sydd wedi'i wneud o Gafa-cafa neu sy'n ei gynnwys yn cael ei fewnforio o Wladwriaeth AEE, os yw'r bwyd-

- (a) yn tarddu o Wladwriaeth AEE, neu
- (b) yn tarddu y tu allan i Ardal Ewropeaidd Economaidd ond y mae mewn cylchrediad rhydd mewn Aelod-wladwriaethau,

ac allforir ef, neu mae i'w allforio i Wladwriaeth AEE heblaw'r Deyrnas Unedig.

### **Cosb a Gorfodi**

4.-(1) Bydd unrhyw berson sy'n tramgwyddo neu sy'n methu â chydymffurfio â rheoliad 3 yn euog o dramgwydd a bydd yn agored ar gollfarn ddiannod i ddirwy nad yw'n fwy na lefel 5 ar y raddfa safonol.

(2) Yn ddarostyngedig i baragraff (3), rhaid i bob awdurdod bwyd orfodi darpariaethau'r Rheoliadau hyn o fewn ei ardal.

(3) Rhaid i bob awdurdod iechyd porthladd orfodi

"food authority" ("*awdurdod bwyd*") has the same meaning as in section 5(1A) and (3)(a) and (b) of the Act;

"free circulation in member States" ("*cylchrediad rhydd mewn Aelod-wladwriaethau*") has the same meaning as in Article 23.2, as read with Article 24, of the Treaty establishing the European Community;

"Kava-kava" ("*Cafa-cafa*") means a plant, or any part of or an extract from a plant, belonging to the species Piper methysticum;

"port health authority" ("*awdurdod iechyd porthladd*") means in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984(1), a port health authority for that district constituted by order under section 2(4) of that Act.

### **Prohibition on sale etc. of food consisting of or containing Kava-kava**

3.-(1) Subject to paragraph (2), no person shall-

- (a) sell, or
- (b) possess for sale or offer, expose or advertise for sale, or
- (c) import into Wales from a country outside the United Kingdom or transport into Wales from any other part of the United Kingdom any food consisting of or containing Kava-kava.

(2) The prohibition imposed by paragraph (1) does not apply where the food consisting of or containing Kava-kava is imported from an EEA State, if the food-

- (a) originates in an EEA State, or
- (b) originates outside the European Economic Area, but is in free circulation in member States,

and is being, or is to be exported to an EEA State other than the United Kingdom.

### **Penalty and enforcement**

4.-(1) Any person who contravenes or fails to comply with regulation 3 is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Subject to paragraph (3), each food authority shall enforce within its area the provisions of these Regulations.

(3) Each port health authority enforces within its

(1) 1984 p.22

(1) 1984 c.22

darpariaethau'r Rheoliadau hyn o fewn ei ardal.

### **Cymhwyso darpariaethau amrywiol Deddf Diogelwch Bwyd 1990**

5.-(1) Bydd darpariaethau canlynol y Ddeddf yn gymwys at ddibenion y Rheoliadau hyn gyda'r addasiad bod unrhyw gyfeiriad yn y darpariaethau hynny at y Ddeddf neu Ran ohoni yn cael eu dehongli at ddibenion y Rheoliadau hyn fel cyfeiriad at y Rheoliadau hyn-

- (a) adran 2 (ystyr estynedig "sale" etc);
- (b) adran 3 (rhagdybiaeth y bwriedir bwyd i'w fwyta gan bobl);
- (c) adran 20 (tramgwyddau o ganlyniad i fai person arall);
- (ch) adran 21 (amddiffyniad o ddiwydrwydd dyladwy) fel y mae'n gymwys at ddibenion adrannau 14 neu 15 o'r Ddeddf;
- (d) adran 22 (amddiffyniad o gyhoeddi yng nghwrs busnes);
- (dd) adran 30(8) (sy'n ymwneud â thystiolaeth ddogfennol);
- (e) adran 33(1) (rhwystro etc swyddogion);
- (f) adran 33(2), gyda'r addasiad bod y cyfeiriad at "any such requirement as is mentioned in subsection 1(b) above" yn cael ei ystyried yn gyfeiriad at unrhyw ofyniad o'r fath ag a grybwyllir yn adran 33(1)(b) fel y caiff ei chymhwyso gan is-baragraff (e);
- (ff) adran 35(1) (cosbi am dramgwyddau), i'r graddau y mae'n ymwneud â thrangwyddau o dan adran 33(1) fel y caiff ei chymhwyso gan is-baragraff (e);
- (g) adran 35(2) a (3), i'r graddau y maent yn ymwneud â thrangwyddau o dan adran 33(2) fel y caiff ei chymhwyso gan is-baragraff (f);
- (ng) adran 36 (trangwyddau gan gyrrff corfforaethol);
- (h) adran 44 (amddiffyn swyddogion sy'n gweithredu'n ddidwyll);

(2) Bydd adran 9 o'r Ddeddf(1) (archwilio ac atafaelu bwyd dan amheuaeth) yn gymwys at ddibenion y Rheoliadau hyn fel pe bai bwyd y byddai'n dramgwydd ei werthu oddi tanynt yn fwyd nad oedd yn cydymffurfio â gofynion diogelwch bwyd.

### **Rhagdybiaeth o ran bwyd mewn sypiau, lotiau neu lwythi**

6. Pan dorri unrhyw un o ofynion y Rheoliadau hyn o ran unrhyw fwyd a phan fo'r bwyd hwnnw yn rhan o swp, lot neu lwyth o fwyd o'r un dosbarth neu ddisgrifiad, rhagdybir, oni bai bod prawf i'r gwrthwyneb, bod y cyfan o'r bwyd yn y swp, lot neu lwyth hwnnw yn methu â chydymffurfio â'r gofynion hynny.

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(1) Diwgiwyd adran 9 gan O.S. 2004/3279.

district the provisions of these Regulations.

### **Application of various provisions of the Food Safety Act 1990**

5.-(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof are 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) as it applies for the purposes of sections 14 or 15 of the Act;
- (e) section 22 (defence of publication in the course of a business);
- (f) section 30(8) (which relates to documentary evidence);
- (g) section 33(1) (obstruction etc of officers);
- (h) section 33(2), with the modification that the reference to "any such requirement as is mentioned in subsection 1(b) above" shall be deemed to be a reference to any such requirement as is mentioned in section 33(1)(b) as applied by sub-paragraph (g);
- (i) section 35(1) (punishment of offences), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (g);
- (j) section 35(2) and (3), in so far as it relates to offences under section 33(2) as applied by sub-paragraph (h);
- (k) section 36 (offences by bodies corporate);
- (l) section 44 (protection of officers acting in good faith).

(2) Section 9 of the Act(1) (inspection and seizure of suspected food) apply for the purposes of these Regulations as if food which it were an offence to sell under them were food which failed to comply with food safety requirements.

### **Presumption in relation to food in batches, lots or consignments**

6. Where any requirements of these Regulations are contravened in respect of any food and that food is part of a batch, lot or consignment of food of the same class or description it is presumed, unless the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

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(1) Section 9 is amended by S.I.2004/3279.

Llofnodwyd ar ran Cynulliad Cenedlaethol Cymru o dan adran 66(1) o Ddeddf Llywodraeth Cymru 1998(1)

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(1)

11 Gorffennaf 2006

11 July 2006

*D. Elis-Thomas*

Llywydd y Cynulliad Cenedlaethol

The Presiding Officer of the National Assembly

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