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WELSH STATUTORY INSTRUMENTS

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**2004 No. 249 (W.26)**

**FOOD, WALES**

**The Food (Provisions relating to  
Labelling) (Wales) Regulations 2004**

*Made - - - - 4th February 2004*

*Coming into force in accordance with regulation 1(2)*

The National Assembly for Wales, in exercise of the powers conferred by sections 16(1)(e) and (f), 17(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990<sup>(1)</sup> and now vested in it<sup>(2)</sup>, having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency and after consultation both as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council<sup>(3)</sup> 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 and in accordance with section 48(4) and (4B) of that Act, makes the following Regulations:

**Title, application and commencement**

1.—(1) These Regulations may be cited as the Food (Provisions relating to Labelling) (Wales) Regulations 2004; they apply to Wales only.

(2) These Regulations come into force on 13th February 2004 except for regulations 5 to 7 which come into force on 1st July 2004.

**Amendment of the Food Labelling Regulations 1996**

2. The Food Labelling Regulations 1996<sup>(4)</sup> shall be amended (in so far as they apply to Wales) in accordance with regulations 3 to 7.

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

(a) in the definition of “Directive 94/54”, for the words “Directive 79/112” there shall be substituted the words “Directive 2000/13”;

(b) after the definition of “Directive 99/2” there shall be inserted the following definition —

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(1) 1990 c. 16.

(2) Functions formerly exercisable by "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 Food Standards Act 1999 (1999 c. 28).

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

(4) S.I. 1996/1499; relevant amending instruments are S.I. 1998/1398, 1999/747, 1136, 1483, 2000/768, 2254, 2000/1925.

““Directive 2000/13” means Directive [2000/13/EC](#) of the European Parliament and of the Council<sup>(5)</sup> on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as amended by Commission Directive [2001/101/EC](#)<sup>(6)</sup>, (which was itself amended by Commission Directive [2002/86/EC](#)<sup>(7)</sup>) and as further amended by Commission Directive [2003/89/EC](#)<sup>(8)</sup>, and as read with Commission Directive [1999/10/EC](#)<sup>(9)</sup> providing for derogations from the provisions of Article 7 of Directive 2000/13 and Commission Directive [2002/67/EC](#)<sup>(10)</sup> on the labelling of foodstuffs containing quinine, and of foodstuffs containing caffeine;”.

4. In the following provisions —
  - regulation 3(1)(i) (exemptions),
  - regulation 19(2)(a)(i) (indication of quantities of certain ingredients or categories of ingredients),
  - regulation 47(b) (defence in relation to exports),
 for the words “Directive 79/112” there shall be substituted the words “Directive 2000/13”.
5. In regulation 14 (names of ingredients) —
  - (a) in paragraph (5) there shall be inserted at the beginning the words “Subject to paragraph (5A) of this regulation”;
  - (b) after paragraph (5) there shall be inserted the following paragraph —
    - “(5A) In the case of quinine or caffeine added to or used in a food as a flavouring, quinine or caffeine (as appropriate) shall be identified by name immediately after the word “flavouring”. ”.
6. After regulation 34 (foods containing sweeteners, added sugar and sweeteners, aspartame or polyols) there shall be inserted the following regulation —

**“Drinks with high caffeine content**

**34A.**—(1) Subject to paragraph (2) of this regulation, in the case of a drink which —

- (a) is intended for consumption without modification and contains caffeine, from whatever source, in a proportion in excess of 150 milligrams per litre, or
- (b) is in concentrated or dried form and after reconstitution contains caffeine, from whatever source, in a proportion in excess of 150 milligrams per litre,

that drink shall be marked or labelled with the words “High caffeine content” in the same field of vision as the name of the drink, and those words shall be followed by a reference in brackets to the caffeine content expressed in milligrams per 100 millilitres.

(2) Paragraph (1) of this regulation shall not apply to any drink based on coffee, tea or coffee or tea extract where the name of the food includes the term “coffee” or “tea”.

7. In regulation 50 (transitional provision) there shall be inserted at the end the following paragraph —
  - “(11) In any proceedings for an offence under regulation 44(1)(a), it shall be a defence to prove that —

(5) OJ No. L109, 6.5.2000, p.29, as corrected by a Corrigendum (OJ No. L124, 25.5.2000, p.66).

(6) OJ No. L310, 28.11.2001, p.19.

(7) OJ No. L305, 7.11.2002, p.19.

(8) OJ L308, 25.11.2003, p.15.

(9) OJ No. L69, 16.3.1999, p.22.

(10) OJ No. L191, 19.7.2002, p.20.

- (a) the food concerned was marked or labelled before 1st July 2004; and
- (b) the matters constituting the offence would not have constituted an offence under these Regulations if the amendments made by regulations 5 and 6 of the Food (Provisions relating to Labelling) (Wales) Regulations 2004 had not been in operation when the food was sold.”.

### **Amendment of the Genetically Modified and Novel Foods (Labelling) (Wales) Regulations 2000**

8. In the Genetically Modified and Novel Foods (Labelling) (Wales) Regulations 2000<sup>(11)</sup> —
- (a) in regulation 2(1) (interpretation) —
    - (i) there shall be substituted for the definition of “Directive 79/112” the following definition —

““Directive 2000/13” (“*Cyfarwyddob 2003/13*”) means Directive [2000/13/EC](#) of the European Parliament and of the Council<sup>(12)</sup> on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as amended by Commission Directive [2001/101/EC](#)<sup>(13)</sup>, which was itself amended by Commission Directive [2002/86/EC](#)<sup>(14)</sup> and as further amended by Commission Directive [2003/89/EC](#)<sup>(15)</sup>”;
    - (ii) in the definition of “Regulation 1139/98” there shall be substituted for the expression “Directive [79/112/EEC](#)” the expression “Directive 2000/13”;
  - (b) in regulation 3(1) (exemptions) and regulation 9(b) (defence in relation to exports) there shall be substituted for the expression “Directive 79/112” the expression “Directive 2000/13”.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998<sup>(16)</sup>

4th February 2004

*D. Elis-Thomas*  
The Presiding Officer of the National Assembly

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<sup>(11)</sup> S.I. 2000/1925 (W. 134).

<sup>(12)</sup> OJ No. L109, 6.5.2000, p.29, as corrected by a Corrigendum (OJ No. L124, 25.5.2000, p.66).

<sup>(13)</sup> OJ No. L310, 28.11.2001, p.19.

<sup>(14)</sup> OJ No. L305, 7.11.2002, p.19.

<sup>(15)</sup> OJ No. L308, 25.11.2003, p.15.

<sup>(16)</sup> 1998 c. 38.

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## EXPLANATORY NOTE

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

1. These Regulations amend the Food Labelling Regulations 1996, as amended, ("the 1996 Regulations") in so far as they apply to Wales. Those Regulations extend to the whole of Great Britain.

2. These Regulations implement in Wales Commission Directive [2002/67/EC](#) on the labelling of foodstuffs containing quinine, and of foodstuffs containing caffeine. Directive [2002/67/EC](#) has to be read with Directive [2000/13/EC](#) of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs. These Regulations require information to be given —

- (a) in the ingredients list of foods as to the presence of any quinine or caffeine added or used as a flavouring (regulation 5);
- (b) on the labelling or marking of drinks containing a high level of caffeine, with some exceptions (regulation 6).

These requirements apply with effect from 1st July 2004 (regulation 1(2)). The Regulations contain a transitional provision (regulation 7).

3. With effect from 13th February 2004 the Regulations also update various references in the 1996 Regulations and in the Genetically Modified and Novel Foods (Labelling) (Wales) Regulations 2000 to Council Directive [79/112/EEC](#) which was consolidated by Directive [2000/13/EC](#), as amended (regulations 1(2), 3, 4 and 8).

4. A regulatory impact assessment has been prepared and placed in the Library of the National Assembly for Wales together with a Transposition Note setting out how the main elements of Directive [2002/67/EC](#) are transposed in these Regulations. Copies may be obtained from the Food Standards Agency, 11th Floor, Southgate House, Wood Street, Cardiff, CF10 1EW.