
WELSH STATUTORY INSTRUMENTS

2006 No. 1851 (W.194)

FOOD, WALES

The Kava-kava in Food (Wales) Regulations 2006

Made - - - - 11 July 2006

Coming into force - - 14 July 2006

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:

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.

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;
- “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;

(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.

“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(4), 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 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⁽⁵⁾ (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.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998⁽⁶⁾

11 July 2006

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

⁽⁵⁾ Section 9 is amended by S.I.2004/3279.

⁽⁶⁾ 1998 c. 38

EXPLANATORY NOTE

(This note is not part of the Regulations)

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)).

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).

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) 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.