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SCOTTISH STATUTORY INSTRUMENTS

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**2002 No. 523**

**FOOD**

**The Kava-kava in Food (Scotland) Regulations 2002**

*Made* - - - - 28th November 2002  
*Laid before the Scottish*  
*Parliament* - - - - 2nd December 2002  
*Coming into force* - - 1st January 2003

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(a), (e) and (f), 18(1)(c), 26(1) and (3) and 48(1) of the Food Safety Act 1990(1), and of all other powers enabling them in that behalf, and having had regard in accordance with section 48(4A)(2) of that Act to relevant advice given by the Food Standards Agency, and after consultation in accordance with section 48(4) and (4B)(3) of that Act, hereby make the following Regulations:

**Citation, commencement and extent**

- 1.—(1) These Regulations may be cited as the Kava-kava in Food (Scotland) Regulations 2002 and shall come into force on 1st January 2003.
- (2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations—
- “the Act” means the Food Safety Act 1990;
- “Kava-kava” means a plant, or any part of or an extract from a plant, belonging to the species *Piper methysticum*.

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

3. No person shall—

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(1) 1990 c. 16. Section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c. 40), Schedule 9, paragraph 6 and by the Food Standards Act 1999 (c. 28) (“the 1999 Act”), Schedule 5, paragraph 10(3). Sections 16(1) and 48(1) were amended by the 1999 Act, Schedule 5, paragraph 8; Section 26(3) was amended by the 1999 Act, Schedule 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) 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 Scotland Act 1998.

(2) Section 48(4A) was inserted by the Food Standards Act 1999, Schedule 5, paragraph 21.

(3) Section 48(4B) was inserted by the Food Standards Act 1999, Schedule 5, paragraph 21.

- (a) sell;
- (b) possess for sale or offer, expose or advertise for sale; or
- (c) import into Scotland,

any food consisting of or containing Kava-kava.

#### **Penalty and enforcement**

4.—(1) Any person who contravenes regulation 3 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Each food authority shall enforce, within its area, the provisions of these Regulations.

#### **Application of various provisions 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 shall be 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 8, 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 (obstruction etc. of officers);
- (h) section 35(1) to (3) (punishment of offences), in so far as it relates to offences under section 33(1) and (2) as applied by sub-paragraph (g);
- (i) section 36 (offences by bodies corporate);
- (j) section 36A (offences by Scottish partnerships); and
- (k) section 44 (protection of officers acting in good faith).

(2) Section 8(3) of the Act (which makes presumptions in the case of batches etc. of food) shall apply to food which it is an offence to sell under these Regulations as it applies to food which fails to comply with food safety requirements.

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

St Andrew’s House,  
Edinburgh  
28th November 2002

*MARY MULLIGAN*  
Authorised to sign by the Scottish Ministers

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## EXPLANATORY NOTE

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

These Regulations prohibit the sale, possession for sale, offer, exposure or advertisement for sale, and the importation into Scotland, 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)).

These Regulations were notified in draft 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 on Information Society services (O.J. No. L 204, 21.7.1998, p.37), as amended by the European Parliament and Council Directive [98/48/EC](#) (O.J. No. L 217, 5.8.1998, p.18).

A Regulatory Impact Assessment, which includes a compliance cost assessment of the effect which these Regulations would have on business costs, has been prepared. A copy has been placed in the Scottish Parliament Information Centre. Copies can be obtained on request from the Food Standards Agency, 6th floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.