

2003 No. 527

FOOD

The Specified Sugar Products (Scotland) Regulations 2003

<i>Made</i>	<i>4th November 2003</i>
<i>Laid before the Scottish Parliament</i>	<i>6th November 2003</i>
<i>Coming into force</i>	<i>28th November 2003</i>

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(e), 17(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990(a) and of all other powers enabling them in that behalf, having had regard in accordance with section 48(4A)(b) of that Act to relevant advice given by the Food Standards Agency and after consultation in accordance with section 48(4) and (4B)(c) of that Act, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Specified Sugar Products (Scotland) Regulations 2003 and shall come into force on 28th November 2003.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

“the Act” means the Food Safety Act 1990;

“candy sugar” means crystalline sugar with crystals having any dimension greater than one centimetre;

“catering establishment” means a restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed or mobile stall) where, in the course of a business, food is prepared for delivery to the ultimate consumer and is ready for consumption without further preparation;

“EEA Agreement” means the Agreement on the European Economic Area(d) signed at Oporto on 2nd May 1992 as adjusted by the Protocol(e) signed at Brussels on 17th March 1993;

“EEA State” means a State which is a Contracting Party to the EEA Agreement;

“icing sugar” means fine particles of white sugar or extra-white sugar or mixtures thereof;

“preparation” includes manufacture and any form of processing or treatment, and “prepared” shall be construed accordingly;

(a) 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 17(1) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; 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.

(b) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(c) Section 48(4B) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(d) O.J. No. L 1, 3.1.94, p.1.

(e) O.J. No. L 1, 3.1.94, p.571.

“the 1996 Regulations” means the Food Labelling Regulations 1996(a);

“reserved description”, as respects any specified sugar product, means any description specified in relation to that product in column 1 of Part I of Schedule 1 (as read with the notes relating to that Part) and the use of any such description in these Regulations shall be construed as meaning the product to which that description relates;

“sell” includes offer or expose for sale or have in possession for sale, and “sale” and “sold” shall be construed accordingly;

“specified sugar product” means any food specified in column 2 of Part I of Schedule 1 (as read with the notes relating to that Part) but does not include any such food in the form of icing sugar, candy sugar or sugar in loaf form;

“sugar in loaf form” means a piece of agglomerated crystalline sugar, usually conically shaped, weighing not less than 250 grammes; and

“ultimate consumer” means any person who buys otherwise than—

- (a) for the purpose of resale;
- (b) for the purposes of a catering establishment; or
- (c) for the purposes of a manufacturing business.

Scope of Regulations

3. These Regulations apply to specified sugar products, intended for human consumption and ready for delivery to the ultimate consumer or to a catering establishment.

Reserved descriptions

4. No person shall sell any food with a label, whether or not attached to or printed on the wrapper or container, which bears, comprises or includes any reserved description or any derivative thereof or any word or description substantially similar thereto unless—

- (a) such food is the specified sugar product to which the reserved description relates;
- (b) such derivative, description or word is used in such a context as to indicate explicitly or by clear implication that the substance to which it relates is only an ingredient of that food;
- (c) such derivative, description or word is used in such a context as to indicate explicitly or by clear implication that such food is not and does not contain a specified sugar product; or
- (d) such derivative, description or word is used in a customary name for another food and is not liable to mislead the consumer.

Labelling and description of specified sugar products

5. Without prejudice to the generality of Part II of the 1996 Regulations, no person shall sell any specified sugar product unless it is marked or labelled with the following particulars:—

- (a) a reserved description of the product; and
- (b) in the case of sugar solution, invert sugar solution and invert sugar syrup, the dry matter and invert sugar content of the product.

Manner of marking or labelling

6. Regulations 35, 36(1) and (5) and 38 of the 1996 Regulations (which relate to the manner of marking or labelling of food) shall apply to the particulars with which a specified sugar product is required to be marked or labelled by regulation 5 of these Regulations as if they were particulars with which food is required to be marked or labelled by the 1996 Regulations.

Penalties and enforcement

7.—(1) Any person who contravenes or fails to comply with regulations 4 or 5 of these Regulations shall be guilty of an offence.

(2) Any person found guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Each food authority shall enforce and execute these Regulations in its area.

(a) S.I. 1996/1499.

Defence in relation to exports

8. In any proceedings for an offence under these Regulations it shall be a defence for the person charged to prove—

- (a) that the food in respect of which the offence is alleged to have been committed was intended for export to a country which has legislation analogous to these Regulations and that the food complies with that legislation; and
- (b) in the case of export to an EEA State, that the legislation complies with the provisions of Council Directive 2001/111/EC relating to certain sugars intended for human consumption^(a).

Application of various provisions of the Food Safety Act 1990

9. 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 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) insofar as it relates to offences under section 33(1) or (2) as applied by paragraph (g) above;
- (i) section 36 (offences by bodies corporate);
- (j) section 36A^(b) (offences by Scottish partnerships); and
- (k) section 44 (protection of officers acting in good faith).

Transitional provision

10. In any proceedings for an offence under these Regulations it shall be a defence for the person charged to prove that—

- (a) the food concerned was marked or labelled before 12th July 2004; and
- (b) the matters constituting the alleged offence would not have constituted an offence under the Specified Sugar Products (Scotland) Regulations 1976^(c) if those Regulations had been in force when the food was marked or labelled.

Consequential amendments and revocations

11.—(1) The following entries relating to the Specified Sugar Products (Scotland) Regulations 1976 shall be omitted—

- (a) in the Food and Drugs (Scotland) Act 1956 (Transfer of Enforcement Functions) Regulations 1983^(d), in Schedule 1;
- (b) in the Food (Revision of Penalties and Mode of Trial) (Scotland) Regulations 1985^(e), in Schedule 1;
- (c) in the Food Safety Act 1990 (Consequential Modifications) (Scotland) Order 1990^(f), in Schedule 1, Part I, Schedule 2, Schedule 3, Part II and Schedules 5 and 8;
- (d) in the Food Safety (Exports) Regulations 1991^(g), in Schedule 2;
- (e) in the Food (Forces Exemptions) (Revocations) Regulations 1992^(h), in the Schedule, Part II;

^(a) O.J. No. L 10, 12.1.02, p.53, as adopted by EEA Joint Committee Decision 99/02 (O.J. No. L 298, 31.10.02, p.10).

^(b) Section 36A was inserted by paragraph 16 of Schedule 5 to the 1999 Act.

^(c) S.I. 1976/946; amended by S.I. 1982/410.

^(d) S.I. 1983/270 to which there are amendments not relevant to these Regulations.

^(e) S.I. 1985/1068 to which there are amendments not relevant to these Regulations.

^(f) S.I. 1990/2625 to which there are amendments not relevant to these Regulations.

^(g) S.I. 1991/1476 to which there are amendments not relevant to these Regulations.

^(h) S.I. 1992/2596.

- (f) in the Colours in Food Regulations 1995(a), in regulation 12(2);
- (g) in the Miscellaneous Food Additives Regulations 1995(b), in regulation 10(4) and in Schedule 9;
- (h) in the 1996 Regulations, in regulation 49(3); and
- (i) in the Miscellaneous Food Additives (Amendment) Regulations 1999(c), in regulation 14(1).

(2) The Specified Sugar Products (Scotland) Regulations 1976 and the Specified Sugar Products (Scotland) (Amendment) Regulations 1982(d) are hereby revoked.

(3) In the Miscellaneous Food Additives Regulations 1995, in Schedule 2, Part B, second table and Schedule 6, for “Directive 73/437/EEC”(e) substitute “Directive 2001/111/EC”(f).

(4) The instruments specified in column 1 of Schedule 2 shall be amended as set out in column 2 of that Schedule.

TOM McCABE

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
4th November 2003

(a) S.I. 1995/3124 to which there are amendments not relevant to these Regulations.
(b) S.I. 1995/3187 to which there are amendments not relevant to these Regulations.
(c) S.I. 1999/1136.
(d) S.I. 1982/410.
(e) O.J. L 356, 27.12.73, p.71.
(f) O.J. L 10, 12.1.02, p.53.

SCHEDULE 1
SPECIFIED SUGAR PRODUCTS

PART I

SPECIFIED SUGAR PRODUCTS AND THEIR RESERVED DESCRIPTIONS

<i>Column 1 Reserved Descriptions</i>	<i>Column 2 Specified Sugar Products</i>
1. Semi-white sugar	<p>Purified and crystallised sucrose of sound and fair marketable quality with the following characteristics:–</p> <ul style="list-style-type: none"> (a) polarisation not less than 99.5°Z; (b) invert sugar content not more than 0.1% by weight; (c) loss on drying not more than 0.1% by weight.
2. Sugar or white sugar	<p>Purified and crystallised sucrose of sound and fair marketable quality with the following characteristics:–</p> <ul style="list-style-type: none"> (a) polarisation not less than 99.7°Z; (b) invert sugar content not more than 0.04% by weight; (c) loss on drying not more than 0.06% by weight; (d) type of colour not more than nine points determined in accordance with paragraph 2 of Part II of this Schedule.
3. Extra-white sugar	<p>The product having the characteristics referred to in item 2(a), (b) and (c) of this Schedule and in respect of which the total number of points determined according to the provisions of paragraphs 2 to 4 of Part II of this Schedule does not exceed eight, and not more than:</p> <ul style="list-style-type: none"> - four for the colour type; - six for the ash content; - three for the colour in solution.
4. Sugar solution	<p>The aqueous solution of sucrose with the following characteristics:–</p> <ul style="list-style-type: none"> (a) dry matter not less than 62% by weight; (b) invert sugar content (ratio of fructose to dextrose 1.0 ± 0.2) not more than 3% by weight of dry matter; (c) conductivity ash not more than 0.1% by weight of dry matter, determined in accordance with paragraph 3 of Part II of this Schedule; (d) colour in solution not more than 45 ICUMSA units.
5. Invert sugar solution	<p>The aqueous solution of sucrose partially inverted by hydrolysis, in which the proportion of invert sugar does not predominate, with the following characteristics:–</p>

<i>Column 1</i> <i>Reserved Descriptions</i>	<i>Column 2</i> <i>Specified Sugar Products</i>
	<ul style="list-style-type: none"> (a) dry matter not less than 62% by weight; (b) invert sugar content (ratio of fructose to dextrose 1.0 ± 0.1) more than 3% but not more than 50% by weight of dry matter; (c) conductivity ash not more than 0.4% by weight of dry matter, determined in accordance with paragraph 3 of Part II of this Schedule.
6. Invert sugar syrup	The aqueous solution, whether or not crystallised, of sucrose that has been partly inverted via hydrolysis, in which the invert sugar content (ratio of fructose to dextrose 1.0 ± 0.1), must exceed 50% by weight of dry matter, but which must otherwise meet the requirements laid down in item 5(a) and (c) of this Part.
7. Glucose syrup	The purified and concentrated aqueous solution of nutritive saccharides obtained from starch and/or inulin, with the following characteristics:– <ul style="list-style-type: none"> (a) dry matter not less than 70% by weight; (b) dextrose equivalent not less than 20% by weight of dry matter and expressed as D-glucose, determined in accordance with paragraph 10 of Part II of this Schedule; (c) sulphated ash not more than 1% by weight of dry matter.
8. Dried glucose syrup	Partially dried glucose syrup with at least 93% by weight of dry matter, but which must otherwise meet the requirements laid down in item 7(b) and (c) of this Part.
9. Dextrose or dextrose monohydrate	Purified and crystallised D-glucose containing one molecule of water of crystallisation, with the following characteristics:– <ul style="list-style-type: none"> (a) dextrose (D-glucose) not less than 99.5% by weight of dry matter, determined in accordance with paragraph 10 of Schedule 2; (b) dry matter not less than 90% by weight; (c) sulphated ash not more than 0.25% by weight of dry matter.
10. Dextrose or dextrose anhydrous	Purified and crystallised D-glucose not containing water of crystallisation, with at least 98% by weight of dry matter, but which must otherwise meet the requirements laid down in item 9(a) and (c) of this Part.
11. Fructose	Purified crystallised D-fructose with the following characteristics:– <ul style="list-style-type: none"> (a) fructose content 98% minimum; (b) glucose content 0.5% maximum; (c) loss on drying not more than 0.5% by weight; (d) conductivity ash not more than 0.1% by weight determined in accordance with paragraph 3 of Part II of this Schedule.

Notes:

1. The reserved description “sugar” or “white sugar” may be used as an alternative to the reserved description “extra-white sugar” in the case of the product described at item 3 above.
2. In the case of invert sugar syrup incorporating crystals in the solution the qualifying term “crystallised” shall be added to the description of the product.
3. Where a specified sugar product described at item 7 or 8 above contains fructose in a proportion of greater than 5% on a dry matter basis the reserved description shall be “glucose-fructose syrup” or “fructose-glucose syrup” and “dried glucose-fructose syrup” or “dried fructose-glucose syrup” as the case may be so as to reflect whether the glucose component or the fructose component is in greater proportion.
4. The products described at items 1 to 11 above may, in addition to the reserved description, also bear commonly used qualifying terms provided that the result is not liable to mislead the consumer.
5. The description “white” may be used in relation to any product described at item 4 above where the colour in solution does not exceed 25 ICUMSA units determined in accordance with the method of the International Commission for Uniform Methods of Sugar Analysis (“ICUMSA”) as set out in paragraph 3 of Chapter A of the Annex to Commission Regulation (EEC) No. 1265/69 establishing methods for the determining of the quality of sugar brought in by intervention agencies(a).
6. The description “white” may be used in relation to any of the products described at items 5 and 6 above where the conductivity ash content does not exceed 0.1% and the colour in solution does not exceed 25 ICUMSA units determined as set out in paragraph 3 of Chapter A of the Annex to Commission Regulation (EEC) No. 1265/69.
7. Specified sugar products may contain any substance permitted pursuant to Council Directive 88/344/EEC on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients(b) or Council Directive 89/107/EEC on the approximation of the laws of the Member States concerning food additives authorised for use in foodstuffs intended for human consumption(c).

(a) O.J. No. L 163, 1.7.69, p.1.

(b) O.J. No. L 157, 24.6.88, p.28.

(c) O.J. No. L 40, 11.2.89, p.27.

PART II
METHODS OF ANALYSIS

1. The method for determining the loss on drying of semi-white sugar, sugar or white sugar and extra-white sugar is Method 1.
2. The method of determining the colour type of sugar or white sugar and extra-white sugar is the method of the Brunswick Institute for Agricultural and Sugar Industry Technology set out in paragraph 2 of Chapter A of the Annex to Commission Regulation (EEC) No. 1265/69(a) (for the purpose of determining the number of points, one point corresponds to 0.5 units).
3. The method of determining the ash content of extra-white sugar, sugar solution, invert sugar solution, invert sugar syrup and fructose is the method of ICUMSA as set out in paragraph 1 of Chapter A of the Annex to Commission Regulation (EEC) No. 1265/69 (for the purpose of determining the number of points, one point corresponds to 0.0018% of ash).
4. The method of determining the colour in solution of extra-white sugar and sugar solution is the method of ICUMSA set out in paragraph 3 of Chapter A of the Annex to Commission Regulation (EEC) No. 1265/69 (for the purpose of determining the number of points for the purposes of paragraph 3 of Part I of this Schedule, one point corresponds to 7.5 units).
5. The method for determining the dry matter content of glucose syrup, dried glucose syrup, dextrose or dextrose monohydrate and dextrose or dextrose anhydrous is Method 2.
6. The method for determining the dry matter content of sugar solution, invert sugar solution and invert sugar syrup is Method 3.
7. The method for determining the invert sugar content of semi-white sugar is Method 4.
8. The method for determining the invert sugar content of sugar or white sugar and extra-white sugar is Method 5.
9. The method for determining the invert sugar content of sugar solution, invert sugar solution and invert sugar syrup is Method 7.
10. The method for determining the dextrose equivalent of glucose syrup, dried glucose syrup, dextrose monohydrate and dextrose anhydrous is Method 8.
11. The method for determining the sulphated ash content of glucose syrup, dried glucose syrup, dextrose monohydrate or dextrose anhydrous and dextrose or dextrose anhydrous is Method 9.
12. The method for determining the polarisation of semi-white sugar, sugar or white sugar and extra-white sugar is Method 10.
13. For the purpose of this Schedule—
 - (a) references to Methods 1, 2, 3, 4, 5, 7, 8, 9 and 10 are references to the Methods specified by the same numbers in Annex II to Commission Directive 79/796/EEC(b) laying down Community methods of analysis for testing certain sugars intended for human consumption, as read with the introduction to that Annex;
 - (b) “ICUMSA” means the International Commission for Uniform Methods of Sugar Analysis.

(a) O.J. No. L 163, 1.7.69, p.1.
(b) O.J. No. L 239, 22.9.79, p.24.

SCHEDULE 2
CONSEQUENTIAL AMENDMENTS

<i>Column 1</i>	<i>Column 2</i>
The Jam and Similar Products (Scotland) Regulations 1981(a)	<p>in Schedule 4 in each place that they appear, for “Specified Sugar Products (Scotland) Regulations 1976” substitute “Specified Sugar Products (Scotland) Regulations 2003”</p> <p>in Schedule 4, paragraph (c) for “item (2) of Schedule 2” substitute “paragraph 3 of Schedule 1, Part II”</p> <p>in Schedule 4, paragraph (d) for “item (3) of Schedule 2” substitute “paragraph 4 of Schedule 1, Part II”</p>
The Food Labelling Regulations 1996(b)	in Schedule 3, in the entry for glucose syrup, in column 3 insert “The generic name may not be used where the glucose syrup contains fructose in proportions greater than 5% on a dry matter basis”
The Coffee Extracts and Chicory Extracts (Scotland) Regulations 2001(c)	in regulation 5(1)(c), for “the Specified Sugar Products (Scotland) Regulations 1976” substitute “the Specified Sugar Products (Scotland) Regulations 2003”

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- (a) S.I. 1981/1320, to which there are amendments not relevant to these Regulations.
 (b) S.I. 1996/1499, to which there are amendments not relevant to these Regulations.
 (c) S.S.I. 2001/38.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, implement Council Directive 2001/111/EC relating to certain sugars intended for human consumption (O.J. No. L 10, 12.1.02, p.53). Article 2.2 of that Directive which concerns labelling of weights on small pre-packaged products will be implemented by separate Regulations. The Regulations revoke and replace the Specified Sugar Products (Scotland) Regulations 1976 (“the 1976 Regulations”), as amended.

The Regulations–

- (a) prescribe definitions and reserved descriptions for certain specified sugar products (regulation 2 and Schedule 1, Part I);
- (b) provide for the Regulations to apply to such specified sugar products intended for human consumption and ready for delivery to the ultimate consumer or to a catering establishment (regulation 3);
- (c) restrict the use of reserved descriptions to the specified sugar products to which they relate (regulation 4);
- (d) prescribe labelling requirements for such products (regulation 5);
- (e) prescribe the manner of marking or labelling by applying specified provisions of the Food Labelling Regulations 1996 (regulation 6);
- (f) specify a penalty, enforcement authorities and, in accordance with Articles 2 and 3 of Council Directive 89/397/EEC on the official control of foodstuffs (O.J. No. L 186, 30.6.89, p.23) and the European Economic Area Agreement, a defence in relation to exports (regulations 7 and 8);
- (g) apply various provisions of the Food Safety Act 1990 (regulation 9);
- (h) make transitional provisions (regulation 10);
- (i) revoke the previous Regulations and make consequential amendments (regulation 11 and Schedule 2);
- (j) prescribe methods of analysis for testing certain sugars intended for human consumption in accordance with Commission Directive 79/796 laying down Community methods of analysis for testing certain sugars intended for human consumption (O.J. No. L 239, 22.9.79, p.24), and testing methods in accordance with Commission Regulation (EEC) No. 1265/69 on establishing methods for determining the quality of sugar brought in by intervention agencies (O.J. No. L 163, 1.7.69, p.1) (Schedule 1, Part II).

The Regulations differ from the 1976 Regulations by–

- (a) inserting new reserved descriptions for fructose, glucose, fructose syrup, fructose-glucose syrup and glucose-fructose syrup;
- (b) omitting the reserved descriptions and definitions of lactose, soft sugar, sugar solutions, white soft sugar, icing dextrose and powdered dextrose;
- (c) excluding icing sugar, candy sugar and sugar in loaf form from the scope of the Regulations;
- (d) introducing technical compositional changes for sugars; and
- (e) re-enacting with modifications labelling requirements and methods of analysis to determine certain characteristics of specified sugar products.

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

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