
SCOTTISH STATUTORY INSTRUMENTS

2004 No. 133

The Jam and Similar Products (Scotland) Regulations 2004

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Jam and Similar Products (Scotland) Regulations 2004 and shall come into force on 28th April 2004.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

“the 1996 Regulations” means the Food Labelling Regulations 1996⁽¹⁾;

“aqueous extract of fruit” means the aqueous extract of fruit which, subject to the losses necessarily occurring in proper manufacturing, contains all the water-soluble constituents of the fruit used;

“authorised treatment” means a treatment described in paragraphs 2 to 4 of Schedule 2;

“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;

“chestnut” means the fruit of the sweet chestnut tree (*Castanea sativa*);

“Directive 2001/113” means Council Directive 2001/113/EC⁽²⁾ relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption;

“EEA Agreement” means the Agreement on the European Economic Area⁽³⁾ signed at Oporto on 2nd May 1992 as adjusted by the Protocol⁽⁴⁾ signed at Brussels on 17th March 1993;

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

“free circulation” has the same meaning as in Article 23.2 of the Treaty establishing the European Community as read with Article 24;

“fruit” means fresh, sound fruit, free from deterioration, containing all of its essential constituents and sufficiently ripe for use, after cleaning, removal of blemishes, topping and tailing, and includes ginger, tomatoes, the edible parts of rhubarb stalks, carrots, sweet potatoes, cucumbers, pumpkins, melons and watermelons;

“fruit pulp” means the edible part of the whole fruit, with or without peel, skin, seeds or pips, as appropriate, which may have been sliced or crushed but which has not been reduced to a purée;

(1) S.I.1996/1499; the relevant amending instrument is S.I. 1998/1398.

(2) O.J. No. L 10, 12.1.02, p.67.

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

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

“fruit purée” means the edible part of the whole fruit, with or without peel, skin, seeds or pips, as appropriate, which has been reduced to a purée by being sieved or subjected to a similar process;

“ginger” means the edible root of the ginger plant in a fresh or preserved state and may be dried or preserved in syrup;

“permitted additional ingredient” means an ingredient described in paragraph 1 of Schedule 2, and which is used as specified in that paragraph;

“permitted sweetener” means any sweetener insofar as its use is permitted in the specified jam or similar product by the Sweeteners in Food Regulations 1995(5);

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

“reserved description” as regards any specified jam or similar product means any description specified in relation to that product in column 1 of Schedule 1 as read with the Notes to that Schedule;

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

“specified jam or similar product” means, subject to paragraph (2), any food specified in column 2 of Schedule 1 as read with the Notes relating to that Schedule;

“sugar” means—

- (a) sugar as defined in Council Directive 2001/111/EC(6) relating to certain sugars intended for human consumption;
 - (b) fructose syrup;
 - (c) sugars extracted from fruit; or
 - (d) brown sugar,
- or any combination thereof;

“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; and

“vine fruits” means muscatels, raisins, sultanas or currants.

(2) A food described in column 2 of items 1 to 7 of Schedule 1 is not a specified jam or similar product if—

- (a) it contains any additional ingredient other than a permitted additional ingredient;
- (b) any raw material referred to in paragraphs 2 to 4 of Schedule 2 used in the preparation of that food has been subjected to any treatment other than an authorised treatment.

(3) Any other expression used both in these Regulations and in Directive 2001/113 has the same meaning in these Regulations as in that Directive.

Scope of the Regulations

3.—(1) Subject to paragraphs (2) and (3) these Regulations apply to specified jam or similar products, intended for human consumption and ready for delivery to the ultimate consumer or to a catering establishment.

(5) S.I. 1995/3123 to which there are amendments not relevant to these Regulations.

(6) O.J. No. L 10, 12.1.02, p.53.

(2) These Regulations do not apply to any specified jam or similar product intended for the manufacture of fine bakery wares, pastries or biscuits.

(3) These Regulations do not apply in respect of any product bearing the description set out at items 8 to 11 of column 1 of Schedule 1 which is brought into Scotland from—

- (a) an EEA State (other than the United Kingdom) having been lawfully produced in an EEA State; or
- (b) a Member State (other than the United Kingdom) in which it was in free circulation; or
- (c) another part of the United Kingdom—
 - (i) having been lawfully produced in an EEA State; or
 - (ii) having been in free circulation in a Member State.

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 jam or similar product to which the reserved description relates;
- (b) such description, derivative 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; or
- (c) such description, derivative 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 jam or similar product.

Labelling and description of specified jam or similar products

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

- (a) the reserved description of the product;
- (b) where any specified jam or similar product has a residual sulphur dioxide content of more than 10 milligrams per kilogram then, in addition to any particulars required to be identified in a list of ingredients by the 1996 Regulations, that residual content shall be identified in the list of ingredients according to the percentage by weight of the residue in the product as “sulphur dioxide”.

(2) Without prejudice to the generality of Part II of the 1996 Regulations, no person shall sell any product specified at items 1 to 7 of Schedule 1 unless it is marked or labelled with the following particulars—

- (a) in the case—
 - (i) of a product prepared from a single kind of fruit, an indication of that kind of fruit;
 - (ii) of a product prepared from two kinds of fruit, an indication of those kinds of fruit in descending order of the weight of the fruit, fruit pulp, fruit purée, fruit juice, fruit peel or aqueous extract of fruit used in the preparation of the product; and
 - (iii) of a product prepared from three or more kinds of fruit, an indication of those kinds of fruit in descending order of weight of fruit, fruit pulp, fruit purée, fruit juice, fruit peel or aqueous extract of fruit used in the preparation of the product or alternatively the words “mixed fruit” or similar wording or the number of kinds of fruit used in the preparation of the product;

- (b) an indication of the proportion of fruit used in the preparation of the product in the form “prepared with Xg of fruit per 100 g”, there being inserted in place of “X” the quantity in grams of fruit used or fruit from which the fruit pulp, fruit purée, fruit juice, fruit peel and aqueous extract of fruit used for every hundred grams of the finished product are derived; and
- (c) except where a nutritional claim as regards sugar content is made and the product is marked or labelled as regards sugar content with the prescribed nutrition labelling as set out in Schedule 7 to the 1996 Regulations, an indication of the total sugar content in the form “total sugar content: Yg per 100 g”, there being inserted in place of “Y” the content in grams of soluble dry matter in each hundred grams of the product, determined by refractometer at 20°C, the content shown being accurate to +/- 3 refractometric degrees.

(3) The particulars with which the product is required to be marked or labelled in accordance with paragraph (2)(b) and (c) shall appear in the labelling of the food in the same field of vision as the name of the food and in clearly visible characters.

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 jam or similar product is required to be marked or labelled by regulation 5 of these Regulations as if they were particulars with which a 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.

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 Directive 2001/113.

Transitional provisions

9. 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 Jam and Similar Products (Scotland) Regulations 1981(7) if those Regulations had been in force when the food concerned was marked or labelled.

(7) S.I. 1981/1320, amended by S.I. 1983/270, 1985/1068, 1990/2180 and 2625, 1991/1476, 1992/2596, 1995/3123, 3124 and 3187, 1998/1398 and 1999/1136.

Application of various provisions of the Act

10. 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 any Part thereof shall be construed 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 section 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), insofar as it relates to offences under section 33(1) and (2) as applied by 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).

Amendments and revocations

11.—(1) The Jam and Similar Products (Scotland) Regulations 1981 and the Jam and Similar Products (Scotland) Amendment Regulations 1990(8) are revoked.

(2) The following entries relating to the Jam and Similar Products (Scotland) Regulations 1981 shall be omitted—

- (a) in the Food and Drugs (Scotland) Act 1956 (Transfer of Enforcement Functions) Regulations 1983(9), in Schedule 2;
- (b) in the Food (Revision of Penalties and Mode of Trial) (Scotland) Regulations 1985(10), in Schedules 1 and 2;
- (c) in the Food Safety Act 1990 (Consequential Modifications) (Scotland) Order 1990(11), in Schedule 1, Part I, Schedule 3, Part II and Schedules 5 and 8;
- (d) in the Food Safety (Exports) Regulations 1991(12), in Schedule 2;
- (e) in the Food (Forces Exemptions) (Revocations) Regulations 1992(13), in the Schedule, Part II;
- (f) in the Sweeteners in Food Regulations 1995(14), in regulation 10(2);
- (g) in the Colours in Food Regulations 1995(15), in regulation 12(3);
- (h) in the Miscellaneous Food Additives Regulations 1995(16), in regulation 10(9);
- (i) in the Food Labelling Regulations 1996, in regulation 49(8);

(8) S.I. [1990/2180](#).

(9) S.I. [1983/270](#), to which there are amendments not relevant to these Regulations.

(10) S.I. [1985/1068](#) to which there are amendments not relevant to these Regulations.

(11) S.I. [1990/2625](#) to which there are amendments not relevant to these Regulations.

(12) S.I. [1991/1476](#) to which there are amendments not relevant to these Regulations.

(13) S.I. [1992/2596](#).

(14) S.I. [1995/3123](#), to which there are amendments not relevant to these Regulations.

(15) S.I. [1995/3124](#), to which there are amendments not relevant to these Regulations.

(16) S.I. [1995/3187](#), to which there are amendments not relevant to these Regulations.

- (j) in the Food Labelling (Amendment) Regulations 1998⁽¹⁷⁾, in regulation 18; and
- (k) in the Miscellaneous Food Additives (Amendment) Regulations 1999⁽¹⁸⁾, in regulation 14(1).

(3) In the Miscellaneous Food Additives Regulations 1995, in Schedules 2, 3 and 7 for “Directive [79/693/EEC](#)” in each place where it occurs substitute “Directive 2001/113/EC.”

(4) In the Colours in Food Regulations 1995, in Schedule 3, for “Directive [79/693/EEC](#)” in each place where it occurs substitute “Directive 2001/113/EC.”

St Andrew’s House, Edinburgh
17th March 2004

TOM McCABE
Authorised to sign by the Scottish Ministers

⁽¹⁷⁾ S.I. [1998/1398](#), to which there are amendments not relevant to these Regulations.

⁽¹⁸⁾ S.I. [1999/1136](#), to which there are amendments not relevant to these Regulations.