

2005 No. 1

FOOD

**The Food Labelling (Added Phytosterols or Phytostanols)
(Scotland) Regulations 2005**

<i>Made</i> - - - -	<i>10th January 2005</i>
<i>Laid before the Scottish Parliament</i>	<i>10th January 2005</i>
<i>Coming into force</i> - -	<i>1st February 2005</i>

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(e) and (f), 17(2), 26(1) and (3) and 48(1) of the Food Safety Act 1990(a) and all other powers enabling them in that behalf, after having had regard, in accordance with section 48(4A)(b) of that Act, to relevant advice given by the Food Standards Agency, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Food Labelling (Added Phytosterols or Phytostanols) (Scotland) Regulations 2005 and shall come into force on 1st February 2005.

(2) The Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

“biscuits” includes wafers, rusks, oatcakes and matzos;

“the Commission Regulation” means Commission Regulation (EC) No. 608/2004(c) concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytostanols and/or phytostanol esters;

“confectionery product” means any item of chocolate confectionery or sugar confectionery;

(a) 1990 c.16; section 1(1) and (2) (definition of food) was substituted by S.I. 2004/2990; section 53(2) was amended by Schedule 6 to the Food Standards Act 1999 (c.28) (“the 1999 Act”) and S.I. 2004/2990; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c.40), Schedule 9, paragraph 6 and by 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; section 48(4) is disapplied in respect of these regulations by virtue of section 48(4C), inserted by S.I. 2004/2990; 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) (“the 1998 Act”) 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 1998 Act.

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

(c) O.J. No. L 97, 1.4.04, p.44.

“Directive 2000/13” means Directive 2000/13/EC of the European Parliament and of the Council(a) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as corrected by a corrigendum published on 25th May 2000(b) and as amended by Commission Directive 2001/101/EC(c) (which was itself amended by Commission Directive 2002/86/EC(d)), the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded(e) and Directive 2003/89/EC of the European Parliament and of the Council(f);

“edible ice” includes ice-cream, water ice and fruit ice, whether alone or in combination, and any similar food;

“fancy confectionery product” means any confectionery product in the form of a figure, animal, cigarette or egg or in any other fancy form;

“flour confectionery” means any cooked food which is ready for consumption without further preparation (other than reheating), of which a characterising ingredient is ground cereal, including shortbread, sponges, crumpets, muffins, macarons, ratafias, pastry and pastry cases, and also includes meringues, petits fours and uncooked pastry and pastry cases, but does not include bread, pizzas, biscuits, crispbread, extruded flat bread or any food containing a filling which has as an ingredient any cheese, meat, offal, fish, shellfish, vegetable protein material or microbial protein material;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(g);

“the key particulars” means those particulars specified in items 1 and 5 in the second sub-paragraph of Article 2 of the Commission Regulation;

“prepacked for direct sale” means–

- (a) in relation to a food other than flour confectionery, bread and edible ices, prepacked by a retailer for sale by the retailer on the premises where the food is packed or from a vehicle or stall used by the retailer, and
- (b) in relation to flour confectionery, bread and edible ices, prepacked by a retailer for sale as in paragraph (a) of this definition, or prepacked by the producer of the food for sale by the retailer either on the premises where the food is produced or on other premises from which the retailer conducts business under the same name as the business conducted on the premises where the food is produced;

“preparation”, in relation to food, includes manufacture and any form of processing or treatment;

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

“the specified particulars” means the particulars required by Article 2 of the Commission Regulation.

(2) Food shall be regarded as prepacked for the purposes of these Regulations if–

- (a) it is ready for sale to the ultimate consumer or to a mass caterer; and
- (b) it is–
 - (i) put into packaging before being offered for sale in such a way that the food, whether wholly or only partly enclosed, cannot be altered without opening or changing the packaging, or

(a) O.J. No. L 109, 6.5.00, p.29.

(b) O.J. No. L 124, 25.5.00, p.66.

(c) O.J. No. L 310, 28.11.01, p.19.

(d) O.J. No. L 305, 7.11.02, p.19.

(e) O.J. No. L 236, 23.9.03, p.92.

(f) O.J. No. L 308, 25.11.03, p.15.

(g) c.39. Section 2 was amended by the Environment Act 1995 Schedule 22, paragraph 232.

- (ii) wholly enclosed in packaging before being offered for sale and the food is intended to be cooked without opening the packaging,

but food shall not be regarded as prepacked for the purposes of these Regulations if it comprises an individually wrapped sweet or chocolate which is not enclosed in any further packaging and which is not intended for sale as an individual item.

(3) Other expressions used both in these Regulations and in Directive 2000/13 have the same meaning in these Regulations as they have in that Directive.

Offences and penalties

3. Subject to regulation 4, any person who—

- (a) sells any food in respect of which the labelling requirements of the Commission Regulation apply and which is not labelled with the specified particulars; or
- (b) sells any food which is not labelled in accordance with regulation 5, 6 or 7,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Exemption

4. In the case of—

- (a) food which is not prepacked;
- (b) food which is prepacked for direct sale; or
- (c) individually wrapped fancy confectionery products which are not enclosed in any further packaging and which are intended for sale as single items,

such food need not be labelled with any of the specified particulars other than the key particulars.

Manner of labelling: general requirement

5. When any food other than food to which regulation 6 applies is sold, any particulars with which it is required to be labelled by the Commission Regulation shall appear—

- (a) on the packaging;
- (b) on a label attached to the packaging; or
- (c) on a label which is clearly visible through the packaging,

save that, where the sale is otherwise than to the ultimate consumer, such particulars may, alternatively, appear only on the commercial documents relating to the food where it can be guaranteed that such documents, containing all such particulars, either accompany the food to which they relate or were sent before, or at the same time as, delivery of the food.

Manner of labelling: special rules

6.—(1) This regulation applies to—

- (a) food which is not prepacked;
- (b) food which is prepacked for direct sale; and
- (c) any individually wrapped fancy confectionery product which is not enclosed in any further packaging and which is intended for sale as a single item.

(2) When any food to which this regulation applies is sold to the ultimate consumer, the key particulars with which that food is required to be labelled by the Commission Regulation as read with regulation 4 shall appear—

- (a) on a label attached to the food; or

- (b) on a menu, notice, ticket or label which is readily discernible by an intending purchaser at the place where the purchaser chooses that food.

(3) When any food to which this regulation applies is sold otherwise than to the ultimate consumer, the key particulars with which that food is required to be labelled by the Commission Regulation as read with regulation 4 shall appear—

- (a) on a label attached to the food;
- (b) on a ticket or notice which is readily discernible by the intending purchaser at the place where the purchaser chooses that food; or
- (c) in commercial documents relating to the food where it can be guaranteed that such documents either accompany the food to which they relate or were sent before, or at the same time as, delivery of the food.

Intelligibility of marking or labelling

7.—(1) The particulars with which a food is required to be labelled by regulations 5 and 6, or which appear on a menu, notice, ticket or label pursuant to regulation 6, shall be easy to understand, clearly legible and indelible and, when a food is sold to the ultimate consumer, such particulars shall be marked in a conspicuous place in such a way as to be easily visible.

(2) Such particulars shall not in any way be hidden, obscured or interrupted by any other written or pictorial matter.

(3) Paragraph (1) shall not be taken to preclude the giving of such particulars at mass caterers, in respect of foods the variety and type of which are changed regularly, by means of temporary media (including the use of chalk on a blackboard).

Enforcement

8. Each local authority shall enforce and execute these Regulations and the Commission Regulation in its area.

Defence in relation to exports

9. In any proceedings for an offence under these Regulations, it shall be a defence for the person charged to prove that the food in respect of which the offence is alleged to have been committed—

- (a) was intended for export to a country (other than a Member State) which has legislation analogous to the Commission Regulation and that the food complies with that legislation; or
- (b) was intended for export to a Member State, is food to which the Commission Regulation applies, and that the food complies with the provisions of the Commission Regulation as read with Directive 2000/13 as applied in that Member State.

Application of various provisions of the Act

10.—(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 as a reference to these Regulations—

- (a) section 2 (extended meaning of “sale” etc.);
- (b) section 3 (presumptions 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;
- (e) section 30(8) (which relates to documentary evidence);
- (f) section 35(1) to (3) (punishment of offences) in so far as it relates to offences under section 33(1) or (2) as applied by paragraph (3) below;

- (g) section 36 (offences by bodies corporate); and
- (h) section 36A (offences by Scottish partnerships).

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the references in subsection (1) to the Act shall be construed as including references to the Commission Regulation.

(3) 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 shall be construed as including a reference to these Regulations as read with the Commission Regulation—

- (a) section 33 (obstruction etc. of officers), with the modification that the reference in section 33(2) and (3) 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 that subsection as applied by this sub-paragraph; and
- (b) section 44 (protection of officers acting in good faith).

RHONA BRANKIN

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
10th January 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, provide for the enforcement of Commission Regulation (EC) No. 608/2004 (O.J. No. L 97, 1.4.04, p.44) (“the Commission Regulation”) concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytostanols and/or phytostanol esters. The Commission Regulation requires such foods and food ingredients to be labelled with additional information, including the words “with added plant sterols/plant stanols”.

The Commission Regulation was made pursuant to Directive 2000/13/EC of the European Parliament and of the Council (O.J. No. L 109, 6.5.00, p.29) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (“the Directive”). In consequence, the products covered by the Commission Regulation are foods and food ingredients which are to be delivered as such to the ultimate consumer or which are intended for supply to mass caterers. By virtue of Article 13(4) of the Directive, certain small packages and indelibly marked glass bottles are exempt from certain of the labelling requirements of the Commission Regulation. There is a transitional provision in Article 3 of the Commission Regulation.

Pursuant to Articles 14 and 15 of the Directive, these Regulations contain an exemption from the need to be labelled with some of the particulars required by the Commission Regulation in the case of food which is not prepacked, certain similar foods and fancy confectionery products (regulation 4);

These Regulations also—

- (a) create offences and prescribe a penalty (regulation 3);
- (b) make provision as to the manner of labelling in the case of the required particulars, pursuant to Articles 13(1) and (2) and 14 of the Directive (regulations 5 to 7);
- (c) specify the enforcement authorities (regulation 8);
- (d) provide a defence in relation to exports, in accordance with Articles 2 and 3 of Council Directive 89/397/EEC (O.J. No. L 186, 30.6.89, p.23) on the official control of foodstuffs, as read with the ninth recital to that Directive (regulation 9); and
- (e) apply various provisions of the Food Safety Act 1990 (regulation 10).

A full Regulatory Impact Assessment of the effect that these Regulations will have on the costs of business 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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