

2007 No. 383

FOOD

The Nutrition and Health Claims (Scotland) Regulations 2007

Made - - - - *20th August 2007*

Laid before the Scottish Parliament *23rd August 2007*

Coming into force - - *1st October 2007*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(e) and (f), 17(2), 26(1)(a) and (3), and 48(1) of the Food Safety Act 1990(a) and all other powers enabling them to do so.

In accordance with section 48(4A)(b) of that Act they have had regard to relevant advice given by the Food Standards Agency.

There has been consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council 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(c).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Nutrition and Health Claims (Scotland) Regulations 2007, and come into force on 1st October 2007.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990; and

(a) 1990 c.16; section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; sections 16 and 48(1) were amended by the Food Standards Act 1999 (c.28) (“the 1999 Act”), Schedule 5, paragraph 8; section 17 was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was repealed in part by the 1999 Act, Schedule 6; section 48(4) is disapplied in respect of these Regulations by virtue of section 48(4C) which was inserted by S.I. 2004/2990; amendments made by Schedule 5 to the 1999 Act should 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, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not so transferred those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).

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

(c) O.J. No. L 31, 1.2.02, p.1. This Regulation was amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.03, p.4) and Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 8.4.06, p.3).

“the Regulation” means Regulation (EC) No. 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on foods^(a).

(2) Expressions used in these Regulations and in the Regulation have the same meaning in these Regulations as they do in that Regulation.

(3) Any reference to a numbered Article is a reference to the Article so numbered in the Regulation.

Competent Authorities

3. The competent authority for the purposes of the Regulation—

- (a) in relation to Articles 1(4), 15(2), 16(2) and 18(2) is the Food Standards Agency; and
- (b) in relation to Article 6(3) is each food authority in its area.

Enforcement

4. Each food authority within its area shall execute and enforce the provisions of these Regulations and of the Regulation.

Offences and Penalties

5.—(1) Subject to the derogation contained in Article 1(3) (relating to trade marks etc) and to the transitional measures contained in Article 28, any person who contravenes or fails to comply with the provisions of the Regulation specified in paragraph (2) is guilty of an offence and liable—

- (a) on conviction on indictment to a term of imprisonment not exceeding 2 years or to a fine or both;
- (b) on summary conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding the statutory maximum or both.

(2) The specified provisions are—

- (a) Article 3 (general requirements relating to all claims);
- (b) Article 4(3) (restrictions on claims that may be made on alcoholic beverages);
- (c) Article 6(2) (requirement for justification of claims);
- (d) Article 7 (requirements for nutrition information);
- (e) Article 8(1) (requirements for nutrition claims);
- (f) Article 9 (requirements for comparative claims);
- (g) Article 10(1), (2) and (3) (requirements for health claims);
- (h) Article 12 (prohibition of certain health claims); and
- (i) Article 14(2) (requirements for reduction of disease risk claims).

Application of various provisions of the Act

6. 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 of it is to be construed as a reference to these Regulations:—

- (a) section 2 (extended meaning of “sale” etc.);
- (b) section 3 (presumption that food is intended for human consumption);
- (c) section 20 (offences due to the fault of another person);
- (d) section 21 (defence of due diligence) as it applies for the purposes of section 14 or 15;
- (e) section 22 (defence of publication in the course of a business);

(a) O.J. No. L 404, 30.12.2006, p.9. The revised text of the Regulation is now set out in a Corrigendum (O.J. No. L 12, 18.1.2007, p.3).

- (f) section 30(8) (which relates to documentary evidence);
- (g) section 34 (time limit for prosecutions);
- (h) section 36 (offences by bodies corporate);
- (i) section 36A (offences by Scottish partnerships); and
- (j) section 44 (protection of officers acting in good faith).

Obstruction of officers and provision of information etc

7.—(1) Any person who—

- (a) intentionally obstructs any person acting in the execution of these Regulations; or
- (b) without reasonable cause, fails to give to any person acting in the execution of these Regulations any assistance or information which that person may reasonably require;

is guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding level 5 on the standard scale or both.

(2) Any person who, in purported compliance with any requirement mentioned in paragraph (1)(b), knowingly or recklessly supplies information that is false or misleading in any material particular, is guilty of an offence and liable—

- (a) on conviction on indictment, to a term of imprisonment not exceeding 2 years or to a fine or both;
- (b) on summary conviction, to a term of imprisonment not exceeding 3 months or to a fine not exceeding the statutory maximum or both.

(3) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate that person.

Amendment of the Food Labelling Regulations

8.—(1) The Food Labelling Regulations 1996^(a) are amended in accordance with paragraph (2).

(2) After paragraph (4) of regulation 41, insert the following paragraph:—

“(5) Nothing in regulation 40 or in Schedule 6 or 8 shall operate to prohibit or, as the case may be, restrict a claim made in accordance with the conditions of Regulation (EC) 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on foods^(b).”.

S ROBISON

Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
20th August 2007

(a) S.I. 1996/1499, to which there are amendments not relevant to these Regulations.

(b) O.J. No. L 404, 30.12.2006, p.9. The revised text of the Regulation is now set out in a Corrigendum (O.J. No. L 12, 18.1.2007, p.3).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, make provision to enforce Regulation (EC) No. 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on foods, as corrected by a Corrigendum (O.J. No. L 12, 18.1.07, p.3) (“the EC Regulation”).

These Regulations—

- (a) specify the competent authority for the purposes of certain Articles of the EC Regulation (*regulation 3*);
- (b) specify that the food authority (which in Scotland is the relevant local authority for each local authority area) is the enforcement authority (*regulation 4*);
- (c) provides that, subject to certain derogations and transitional measures specified in the EC Regulation, it is an offence—
 - (i) to make nutrition or health claims that do not comply with the requirements of the EC Regulation;
 - (ii) to make claims on alcoholic drinks other than to the limited extent permitted by the EC Regulation;
 - (iii) to make a claim that cannot be justified;
 - (iv) to fail to provide the prescribed nutrition information when making a nutrition or health claim;
 - (v) to make a nutrition claim that is not one of the ones listed in the Annex to the EC regulation;
 - (vi) to make a comparative nutrition claim that does not comply with the requirements of the EC Regulation;
 - (vii) to make a health claim that is not authorised under the procedures provided for in the EC Regulation and is not accompanied by certain specified information in the labelling or other presentation;
 - (viii) to make a health claim of a type specifically prohibited by the EC Regulation; or
 - (ix) in the case of health claims relating to the reduction of disease risk, to fail to accompany the claim with the statement prescribed in the EC Regulation (*regulation 5*).
- (d) apply sections of the Food Safety Act 1990 (*regulation 6*);
- (e) specify offences and penalties that relate to the obstruction of those working to implement these Regulations and other matters to do with providing information and assistance (*regulation 7*); and
- (f) amend the Food Labelling Regulations 1996 (*regulation 8*).

A full regulatory impact assessment of the effect that this instrument will 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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