

2003 No. 2577

FOOD

The Olive Oil (Marketing Standards) Regulations 2003

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| <i>Made - - - - -</i> | <i>6th October 2003</i> |
| <i>Laid before Parliament</i> | <i>7th October 2003</i> |
| <i>Coming into force - -</i> | <i>1st November 2003</i> |

The Secretary of State, after 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(a), and being designated(b) for the purposes of section 2(2) of the European Communities Act 1972(c) in relation to the common agricultural policy of the European Community, acting in exercise of the powers conferred on her by section 2(2), makes the following Regulations:

Title, extent and commencement

1. These Regulations may be cited as the Olive Oil (Marketing Standards) Regulations 2003, shall extend to Great Britain and shall come into force on 1st November 2003.

Interpretation

2.—(1) In these Regulations—

“blended oil” means a blend of relevant oil and other vegetable oils;

“enforcement authority” shall be construed in accordance with regulation 3 of these Regulations;

“labelling” has the meaning given to it in Article 1(3)(a) of Directive 2000/13/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs(d);

“oil” (without more) means, except in regulation 4(1)(a) and (b), any oil referred to in Article 1(2) of Regulation 136/66;

“port health authority” means in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984(e), a port health authority for that district constituted by order under section 2(4) of that Act;

(a) O.J. No. L31, 1.2.2002, p. 1.

(b) The power of the Secretary of State, as a Minister designated by virtue of S.I. 1972/1811 in relation to the common agricultural policy of the European Community, to make regulations which extend to Scotland remains exercisable by virtue of section 57(1) of the Scotland Act 1998 (1998 c. 46). The Secretary of State’s power, as a Minister so designated, to make regulations which extend to Wales is confirmed by article 3(4) of the European Communities (Designation) (No. 3) Order 1999 (S.I. 1999/2788).

(c) 1972 c. 68.

(d) O.J. L. 109, 6.5.2000, p. 29.

(e) 1984 c. 22.

“Regulation 136/66” means Regulation No. 136/66/EEC of the Council on the establishment of a common organisation of the market in oils and fats(a) as last amended by Council Regulation (EC) No. 1513/2001(b);

“Regulation 2568/91” means Commission Regulation (EEC) No. 2568/91 on the characteristics of olive oil and olive-residue oil and on the relevant methods of analysis(c), as last amended by Commission Regulation (EC) No. 796/2002(d);

“Regulation 1019/2002” means Commission Regulation (EC) No. 1019/2002 on marketing standards for olive oil(e) as last amended by Commission Regulation (EC) No. 1176/2003(f);

“relevant oil” means the olive oils and olive-pomace oils referred to in points 1(a) and (b), 3 and 6 of the Annex to Regulation 136/66;

“retail stage” has the meaning given to it in Article 1(2) of Regulation 1019/2002;

“sells” means, except in relation to regulation 4(1)(a), sells at the retail stage, and includes references to offering or exposing oil for sale and to possessing oil for the purposes of sale;

“specified oil” means extra virgin olive oil and virgin olive oil.

(2) Any reference in these Regulations (other than in this regulation and regulation 4) to an Article is a reference to an Article of Regulation 1019/2002.

(3) Other expressions used in these Regulations have the same meaning as in Regulation 136/66.

Enforcement

3.—(1) These Regulations shall be enforced in England and Wales—

(a) in the district of a port health authority, by the relevant port health authority; and

(b) outside the district of a port health authority—

(i) at any time before the retail stage, in England by the Secretary of State and in Wales by the National Assembly for Wales; and

(ii) at the retail stage, by the relevant food authority within the meaning of section 5(1) and 5(1A) of the Food Safety Act 1990 (“the 1990 Act”)(g), other than non-metropolitan district councils.

(2) These Regulations shall be enforced in Scotland by the relevant food authority within the meaning of section 5(2) of the 1990 Act(h).

Offences relating to the packaging and selling of olive oil

4.—(1) A person shall be guilty of an offence if he—

(a) sells, at the retail stage or otherwise, any oil in contravention of Article 35.1 of Regulation 136/66 (which provides that certain trade descriptions and definitions of oil shall, in relation to the marketing of oil, be compulsory) as read with the Annex to that Regulation and with Regulation 2568/91;

(b) sells any oil other than relevant oil in contravention of Article 35.2 of Regulation 136/66 (which provides that only oil satisfying certain descriptions shall be marketed at the retail stage) as read with the Annex to that Regulation and with Regulation 2568/91;

(c) sells relevant oil in packaging which in contravention of Article 2 of Regulation 1019/2002 (which sets out rules for packaging oil)—

(i) exceeds a maximum capacity of five litres; or

(ii) is fitted with an opening system which can be sealed after the first time it is opened; or

(a) O.J. P. 172, 30.9.66, p. 3025.

(b) O.J. L. 201, 26.7.2001, p. 4.

(c) O.J. L. 248, 5.9.91, p. 1.

(d) O.J. L. 128, 15.5.2002, p. 8.

(e) O.J. L. 155, 14.6.2002, p. 27.

(f) O.J. L. 164, 2.7.2003, p. 12.

(g) 1990 c. 16; section 5(1) was amended by the Local Government (Wales) Act 1994 (c. 19), Schedule 9, paragraph 16(1) and Schedule 18, and by the Food Standards Act 1999 (c. 28), Schedule 5, paragraph 9. Section 5(1A) was inserted by the Local Government (Wales) Act 1994, Schedule 9, paragraph 16(1).

(h) Section 5(2) was amended by the Local Government etc. (Scotland) Act 1994 (1994 c. 39), Schedule 13, paragraph 163(2).

- (d) sells any relevant oil in contravention of Article 3 of Regulation 1019/2002 (which requires that the labelling of such oil shall bear information on the category of oil, in addition to the trade description).

(2) For the purposes of regulation 4(1)(a) and (b), “oil” means any of the descriptions of olive oils and olive-pomace oils referred to in Article 35 of Regulation 136/66 and described in the Annex to that Regulation as read with Regulation 2568/91.

Offences relating to the designation of origin

5.—(1) A person shall be guilty of an offence if he sells any relevant oil the packaging of which bears a designation of origin unless—

- (a) the oil is specified oil; and
- (b) the designation of origin does not contravene Article 4 (conditions for designation of origin labelling).

(2) A person who packages specified oil to which Article 9 (arrangements for approval of packaging establishments) applies shall be guilty of an offence if packaging takes place other than in an establishment which is approved in accordance with Article 9(2).

(3) A person who sells specified oil the labelling of which contravenes the final sentence of Article 9(2) shall be guilty of an offence.

(4) A person who operates an establishment which is the subject of an approval granted in accordance with regulation 10(1) shall be guilty of an offence if he—

- (a) fails to comply with the undertaking given in respect of that establishment in accordance Article 9(2)(b); or
- (b) fails to keep a storage system for the purpose of checks as referred to in Article 9(2)(c).

Offences relating to optional indications on packaging

6.—(1) A person shall be guilty of an offence if he sells, on or after 1st November 2003, any relevant oil the labelling of which includes any optional indications referred to in Article 5 (conditions for the use of optional indications of the method of extraction, the organoleptic properties and the acidity of relevant oil) in contravention of the requirements of Article 5(a), (b) or (d).

(2) A person shall be guilty of an offence if he sells, on or after 1st November 2004, any relevant oil the labelling of which includes any optional indications referred to in Article 5 in contravention of the requirements of Article 5(c).

Offences relating to blended oils and certain foods containing olive oil

7. A person shall be guilty of an offence if he sells—

- (a) any blended oil where the presence of relevant oil is highlighted on the labelling by images or graphics, but relevant oil does not account for more than 50% of the blend concerned;
- (b) any blended oil where—
 - (i) the presence of relevant oil is highlighted on the labelling elsewhere than in the list of ingredients using words, images or graphics; and
 - (ii) the labelling fails to bear the trade description and percentage of relevant oil as set out in Article 6(1) (which requires certain blended oil to contain a trade description and specify the percentage of oil in the blend) and, where olive-pomace oil is present, Article 6(3); or
- (c) any foodstuff to which Article 6(2) (foods other than blended oil and products to which specific product rules apply) applies where—
 - (i) the presence of relevant oil is highlighted on the labelling elsewhere than in the list of ingredients, using words, images or graphics; and
 - (ii) in contravention of Article 6(2) or (3), there is not stated, immediately following the trade description, the percentage of relevant oil.

Penalties

8. Any person guilty of an offence under regulation 4, 5, 6 or 7 shall be liable on summary conviction to a fine not exceeding the statutory maximum.

Method of analysis of oil

9. Where, for the purposes of enforcing these Regulations, an analysis is made of any oil, the method, or methods, of such analysis shall be that, or those, prescribed by Regulation 2568/91.

Approval

10.—(1) An application for approval of an establishment pursuant to Article 9(2) may be made to the Secretary of State who, in accordance with the second indent of Article 9(2), shall determine whether or not that approval is to be granted and, if so, allocate an alphanumeric identification to the establishment.

(2) Following conviction for an offence under regulation 5(4) against which there is no successful appeal, the Secretary of State may serve a notice on the person who operates the establishment, suspending or withdrawing the approval of the establishment and its alphanumeric identification.

(3) A notice under paragraph (2) must be served within 6 months of—

- (a) in the case of a conviction against which there is no appeal, the date on which the right to appeal against that conviction expires; and
- (b) in the case of a conviction against which there is an unsuccessful appeal—
 - (i) if there is no right of appeal against the result of that unsuccessful appeal, the date of that result, and
 - (ii) if there is a right of appeal against that result but no appeal is made, the date on which that right of appeal expires.

(4) The Secretary of State may also withdraw the approval and allocation in question by agreement with the person who operates the establishment.

Powers of authorised officers of enforcement authorities

11.—(1) For the purpose of enforcing these Regulations an authorised officer of an enforcement authority, on producing, if so required, a document showing his authority, may—

- (a) by notice, require a person to furnish the information referred to in the notice, within such time as may be specified in the notice, or to produce for examination such documents or other records as may be required under Articles 7 (documentation in support of indications on labelling) and 8 (arrangements for verifying optional indications);
- (b) at all reasonable times enter any premises (other than premises used only as a dwelling) on which he reasonably suspects that oil is being, or has been, sold;
- (c) inspect and take samples of oil and inspect and remove any container of oil found on the premises.

(2) Any person who intentionally obstructs an authorised officer of an enforcement authority acting in pursuance of these Regulations shall be guilty of an offence under this regulation and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Any person who fails to supply such documentation or other records as may be required under sub-paragraph (a) shall be guilty of an offence under this regulation and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Protection of officers acting in good faith

12.—(1) An officer of an enforcement authority is not personally liable in respect of any act done by him—

- (a) in the execution or purported execution of these Regulations; and

- (b) within the scope of his employment,

if he did that act in the honest belief that his duty under these Regulations required or entitled him to do it.

(2) Where an action has been brought against an officer of an enforcement authority in respect of an act done by him—

- (a) in the execution or purported execution of these Regulations; but
- (b) outside the scope of his employment,

the authority may indemnify him against the whole or a part of any damages which he has been ordered to pay or any costs which he may have incurred if they are satisfied that he honestly believed that the act complained of was within the scope of his employment.

Body corporate

13. Where an offence under any provision of these Regulations is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or similar officer of the body corporate or any person who was purporting to act in any such capacity, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Offences committed in Scotland by a Scottish partnership

14. Where an offence under these Regulations is committed in Scotland by a Scottish partnership and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership shall be guilty of the offence and liable to be proceeded against and punished accordingly.

Offences due to the fault of another

15. Where the commission by any person of an offence under these Regulations is due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Defence of due diligence

16.—(1) In any proceedings for an offence under these Regulations, it shall, subject to paragraph (2), be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless—

- (a) at least seven clear days before the hearing, and
- (b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,

he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

(3) In paragraph (2), any reference to appearing before a court shall be construed as including a reference to being brought before a court.

Revocation and Transitional Provisions

17.—(1) These Regulations do not have effect in relation to any oil which was put into free circulation before 1st November 2003.

(2) The Olive Oil (Marketing Standards) Regulations 1987^(a) and the Olive Oil (Designations of Origins) Regulations 1999^(b) shall continue to have effect in respect of any oil to which paragraph (1) applies.

(3) Except to the extent mentioned in paragraph (2), the Olive Oil (Marketing Standards) Regulations 1987 and the Olive Oil (Designations of Origins) Regulations 1999 are revoked.

6th October 2003

Whitty
Parliamentary Under Secretary of State
Department for Environment, Food and Rural Affairs

(a) S.I. 1987/1783.
(b) S.I. 1999/1513.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Great Britain, come into force on 1st November 2003 and provide for the application of—

- (a) Article 35 of Regulation No. 136/66/EEC of the Council on the establishment of a common organisation of the market in oils and fats (“Regulation 136/66”) (OJ No. 172, 30.9.66, p. 3025) as last amended by Council Regulation (EC) No. 1513/2001 (OJ No. 201, 26.7.2001, p. 4); and
- (b) Commission Regulation (EC) No. 1019/2002 on marketing standards for olive oil (“Regulation 1019/2002”) (OJ No. 155, 14.6.2002, p. 27) as last amended by Commission Regulation (EC) No. 1176/2003 (OJ No. L. 164, 2.7.2003, p. 12).

Article 35 of Regulation 136/66 makes the use of prescribed descriptions and definitions of olive oils and olive-pomace oils compulsory for the purposes of trade, and prohibits retail marketing of certain categories of oil.

Regulation 1019/2002 lays down specific standards for retail stage marketing of certain olive and olive-pomace oils (referred to as “relevant oil” in this Regulation), in particular, packaging and detailed labelling rules.

In implementation of Regulations 136/66 and 1019/2002, these Regulations—

- (i) designate the authorities who are to enforce the Regulations (regulation 3);
- (ii) prescribe offences and penalties for contravention of Regulations 136/66 and 1019/2002 (regulations 4–8), and certain defences (regulations 15–16); and
- (iii) create powers of entry, inspection, sampling and production of documents (regulation 11).

A person will be guilty of an offence if he:

- contravenes Article 35 of Regulation 136/66 (regulation 4);
- packages relevant oil in quantities exceeding 5 litres, or in packaging with an opening system which can be resealed after first opening (regulation 4);
- sells relevant oil without providing information on the category of oil (regulation 4);
- includes on the packaging for sale of relevant oil a designation of origin in contravention of Article 4 of Regulation 1019/2002 (regulation 5);
- includes on the labelling of relevant oil optional indications in contravention of Article 5 of Regulation 1019/2002 (regulation 6);
- includes on the labelling of blended oil any images or graphics highlighting the presence of relevant oil, where there is not more than 50% of such oil in the blend, or otherwise contravenes Article 6 of Regulation 1019/2002 (regulation 7); or
- intentionally obstructs an authorised officer enforcing these Regulations or fails to supply required information (regulation 11).

The offences in regulations 4, 5, 6 and 7 carry a penalty on conviction of a fine not exceeding the statutory maximum. The offences in regulation 11 carry a penalty on conviction of a fine not exceeding level 3 on the standard scale.

These Regulations revoke the Olive Oil (Marketing Standards) Regulations 1987 and the Olive Oil (Designations of Origins) Regulations 1999 with savings.

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