STATUTORY INSTRUMENTS

1990 No. 2506 (S. 208)

FOOD

The Food Labelling (Scotland) Amendment Regulations 1990

Made - - - -	*11th December 1990*
Laid before Parliament	*11th December 1990*
Coming into force	
For the purposes of regulation 14	*1st April 1991*
For all other purposes	*1st January 1991*

The Secretary of State, in exercise of the powers conferred on him by sections 4(1), 16(1)(e), 17(1), 26(1) and 48(1) of the Food Safety Act 1990(**1**) and of all other powers enabling him in that behalf, after consultation in accordance with section 48(4) of the said Act with such organisations as appear to him to be representative of interests likely to be substantially affected by the Regulations, hereby makes the following Regulations:

Title, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Food Labelling (Scotland) Amendment Regulations 1990, shall extend to Scotland only, and shall come into force for the purposes of regulation 14 on 1st April 1991 and for all other purposes on 1st January 1991.

(2) In these Regulations–

"the Combined Nomenclature" means the codes given in Council Regulation (EEC) No. 2658/87 (as amended)(**2**) on the tariff and statistical nomenclature and on the Common Customs Tariff;

"the principal Regulations" means the Food Labelling (Scotland) Regulations 1984(**3**).

Amendment of the principal Regulations

2. The principal Regulations shall be amended as specified in the following provisions of these Regulations and any reference in these provisions to any specified provision shall, unless the

(**1**) 1990 c. 16.
(**2**) OJ No L256, 7.9.87, p.1, as last amended by Commission Regulation (EEC) No. 3496/89, OJ No L337, 21.11.89, p.5.
(**3**) S.I.1984/1519, amended by S.I. 1984/1714, 1985/71, 1068, 1986/836, 1987/26, 2014, 1988/2084, 1989/809, 1990/1, 816; (The Food Safety Act 1990 (Consequential Modifications) (Scotland) Order 1990 and the Food Labelling (Amendment) (Irradiated Food) (Scotland) Regulations 1990 (S.I. 1990/2505)).

context requires otherwise, be taken to be a reference to the provision so specified in the principal Regulations.

3. For regulation 6(c) there shall be substituted the following paragraph:–

"(c) the appropriate durability indication, that is to say–

(i) in the case of a food other than one specified in sub-paragraph (ii) of this paragraph, an indication of minimum durability;

(ii) in the case of a food which, from the microbiological point of view, is highly perishable and in consequence likely after a short period to constitute an immediate danger to human health, a "use by" date;".

4.—(1) To the heading "Indication of minimum durability" preceding the heading to regulation 21 there shall be added the words "or "use by" date".

(2) At the end of regulation 21(2)(a) the word "and" shall be deleted.

(3) In regulation 21(2)(b) there shall be inserted immediately after the words "three months" the words "but not more than 18 months" and at the end there shall be inserted the word ", and".

(4) Immediately following regulation 21(2)(b) there shall be inserted the following sub-paragraph:–

"(c) in the case of a food which can reasonably be expected to retain its specific properties for more than 18 months it may be expressed in terms of a month and year only or in terms of a year only, if (in either case) the words "best before" are replaced by the words "best before end"."

5. Immediately following regulation 21 there shall be inserted the following regulation:–

"**Form of indication of "use by" date**

21A.—(1) Where a "use by" date is required in respect of a food it shall be indicated by–

(a) the words "use by" followed by the date up to and including which the food, if properly stored, is recommended for use, and

(b) any storage conditions which need to be observed.

(2) The "use by" date shall be expressed in terms either of a day and a month (in that order) or of a day, a month and a year (in that order).

(3) The date up to and including which a food required to bear a "use by" date is recommended for use may appear separately from the words "use by", provided that those words are followed by a reference to the place where the date appears.".

6. For regulation 22 there shall be substituted the following regulation:–

"**Foods which need not bear an indication of minimum durability or a "use by" date**

22. The following foods need not be marked or labelled with an indication of minimum durability or a "use by" date:–

(a) fresh fruit and vegetables (including potatoes but not including sprouting seeds, legume sprouts and similar products) which have not been peeled or cut into pieces;

(b) wine, liqueur wine, sparkling wine, aromatized wine and any similar drink obtained from fruit other than grapes and any drink made from grapes or grape musts and coming within codes 2206 00 91, 2206 00 93 and 2206 00 99 of the Combined Nomenclature;

(c) any drink with an alcoholic strength by volume of 10 per cent or more;

(d) any soft drink, fruit juice or fruit nectar or alcoholic drink, sold in a container containing more than 5 litres and intended for supply to catering establishments;

(e) flour confectionery and bread which are normally consumed within 24 hours of their preparation;

(f) vinegar;

(g) cooking salt and table salt;

(h) solid sugar and products consisting almost solely of flavoured or coloured sugars;

(i) chewing gums and similar products;

(j) edible ices in individual portions;

(k) until 20th June 1992–

(i) deep-frozen food,

(ii) cheese which is intended to ripen completely or partially in its packaging,

(iii) any food which, if properly stored, can be expected to retain its specific properties for more than eighteen months.".

7. For regulation 27 there shall be substituted the following regulation:–

"**Small packages and certain indelibly marked bottles**

27.—(1) Subject to paragraphs (2) and (3) of this regulation, any prepacked food, either contained in an indelibly marked glass bottle intended for re-use and having no label, ring or collar, or the largest surface of whose packaging has an area of less than ten square centimetres, need not by virtue of these Regulations be marked or labelled with any of the particulars specified in regulation 6 except the name of the food and, unless the food is not required to be marked or labelled with such an indication, an indication of minimum durability or, as the case may be, a "use by" date.

(2) This regulation does not apply to any food to which regulation 24, 25, 28, 29 or 31A applies.

(3) Until 1st January 1997 any bottle referred to in paragraph (1) of this regulation need not be marked or labelled with an indication of minimum durability or, as the case may be, a "use by" date.".

8. For regulation 32(2)(d) there shall be substituted the following sub-paragraph:–

"(d) in relevant trade documents furnished on or before delivery of the food and, in respect of the particulars require d by regulation 6(a), (c) and (e), on the external packaging in which that food is sold.".

9.—(1) In regulation 35(1) and (2) there shall be inserted immediately after the words "of minimum durability", on each occasion that these occur, the words "or, as the case may be, of a "use by" date".

(2) Immediately following regulation 35(2) there shall be inserted the following paragraph:–

"(3) Paragraphs (1) and (2) of this regulation shall not apply to any food sold in a bottle or packaging where such bottle or packaging is the subject of regulation 27.".

10. At the end of regulation 40(e) the word "or" shall be inserted and immediately following regulation 40(e) there shall be inserted the following paragraphs:–

"(f) sells any food after the date shown in a "use by" date relating to it, or

(g) being a person other than whichever of the manufacturer, packer or seller established within the European Economic Community was originally responsible for so marking the food, alters the indication of minimum durability or, as the case may be, the "use by" date relating to that food.".

11. Immediately after regulation 41 there shall be inserted the following regulation:–

"**Defence in cases of alteration of appropriate durability indication**

41A. In any proceedings for an offence under regulation 40(g) it shall be a defence for the person charged to prove that each alteration in respect of which the offence is alleged was effected under the written authorisation of a person capable of effecting that alteration without contravention of that provision.".

12. In Schedule 7 there shall be inserted after the entry concerning the description "dealcoholised" and the conditions applying thereto the following entry:–

"In column 1 (Words and descriptions)	In column 2 (Conditions)
The description "low alcohol" or any other word or description which implies that the drink being described is low in alcohol	Shall not be applied to any alcoholic drink unless– (a) the drink has an alcoholic strength by volume of not more than 1.2 per cent, and (b) the drink is marked or labelled with an indication of its maximum alcoholic strength (in one of the forms specified in regulation 31(1) immediately preceded by the words "not more than").".

Transitional provision

13. It shall not be an offence under the principal Regulations to sell or advertise for sale any alcoholic drink described as "low alcohol" (or bearing any other word or description which implies that the drink being described is low in alcohol) in contravention of the provisions of regulation 38 of the principal Regulations and Schedule 7 thereto (as herein amended) where such drink was prepacked and labelled before the coming into force of these Regulations.

Revocation

14. Paragraphs (4) and (5) of regulation 21 are hereby revoked.

St. Andrew's House,
Edinburgh
11th December 1990

Strathclyde
Parliamentary under Secretary of State, Scottish Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Scotland only, further amend the Food Labelling (Scotland) Regulations 1984 ("the principal Regulations"). They continue to implement Articles 3 and 9a of Council Directive No 79/112/EEC (OJ No L33, 8.2.79,p.1) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as last amended by Council Directive 89/395/EEC (OJ No L186, 30.06.89, p.17). The Regulations introduce requirements for a "use by" date for microbiolog ically highly perishable foodstuffs (regulations 3 to 5), subject to certain exceptions (regulations 6 and 7). They provide for particulars in trade documents, minor consequential amendments, for new offences and for a defence in case of alteration of the appropriate durability indication (regulations 8 to 11). They also restrict the use of the description "low alcohol" (or any other word or description implying a low alcohol content) to alcoholic drinks having an alcoholic strength by volume of not more than 1.2%, with transitional provisions for drinks pre-packed and labelled before the coming into force of these Regulations (regulations 12 and 13).

The Regulations come into force on 1st January 1991 but existing provisions permitting the use of the "sell by" date are revoked on 1st April 1991, thus permitting their continuation until the end of March 1991.