SCOTTISH STATUTORY INSTRUMENTS

2007 No. 424

FOOD

The Food for Particular Nutritional Uses (Scotland) (Miscellaneous Amendments) Regulations 2007

Made - - - -	*12th September 2007*
Laid before the Scottish Parliament - - - -	*13th September 2007*
Coming into force - -	*15th October 2007*

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

In accordance with section 48(4A)(**2**) 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(**3**).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Food for Particular Nutritional Uses (Scotland) (Miscellaneous Amendments) Regulations 2007 and come into force on 15th October 2007.

(2) These Regulations extend to Scotland only.

(**1**) 1990 c. 16; section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990; section 17 was amended by the Food Standards Act 1999 (c. 28) ("the 1999 Act"), Schedule 5, paragraphs 8 and 12; section 48(1) was amended by the 1999 Act, Schedule 5, paragraph 8; 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).

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

(**3**) O.J. No. L 31, 1.2.02, p.1. The 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).

Amendment to the Infant Formula and Follow on Formula Regulations 1995

2.—(1) Regulation 22 (offences and enforcement) of the Infant Formula and Follow on Formula Regulations 1995(**4**) is amended in accordance with paragraphs (2) and (3).

(2) At the beginning of paragraph (1), insert "Subject to paragraph (3),".

(3) After paragraph (2) insert–

> "(3) A person shall not be considered to have contravened or failed to comply with the provisions contained in regulation 2 where the sale which would otherwise have constituted a contravention or failure to comply is the sale of an infant formula falling within the derogation set out in Article 1 of Commission Regulation (EC) No. 1609/2006 authorising the placing on the market of infant formulae based on hydrolysates of whey protein derived from cows' milk protein for a two year period(**5**).".

Amendment of the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997

3.—(1) The Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997(**6**) are amended in accordance with paragraph (2).

(2) In regulation 4 (labelling, advertising and presentation) omit "or to a reduction in the sense of hunger or an increase in the sense of satiety".

Amendment to the Foods for Special Medical Purposes (Scotland) Regulations 2000

4.—(1) The Foods for Special Medical Purposes (Scotland) Regulations 2000(**7**) are amended in accordance with paragraph (2).

(2) In regulation 2 (interpretation), for the definition "the Directive" substitute the following definition–

> ""the Directive" means Commission Directive 1999/21/EC on dietary foods for special medical purposes(**8**) as amended by 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 Lithuania, 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(**9**) and Commission Directive 2006/82/EC adapting Directive 91/321/EEC on infant formulae and follow on formulae and Directive 1999/21/EC on dietary foods for special medical purposes, by reason of the accession of Bulgaria and Romania(**10**);".

Amendment of the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Regulations 2002

5.—(1) The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes)(Scotland) Regulations 2002(**11**) are amended in accordance with paragraph (2).

(2) In regulation 3(5) (restrictions on sale), for "1st January 2007" substitute "1st January 2010".

(**4**) S.I. 1995/77. Regulation 22 was amended by S.I. 1997/451 and S.S.I. 2004/7.
(**5**) O.J. No. L 299, 28.10.06, p.9.
(**6**) S.I. 1997/2182, as amended by S.S.I. 2005/616.
(**7**) S.S.I. 2000/130, relevantly amended by S.S.I. 2004/395.
(**8**) O.J. No. L 91, 7.4.99, p.29 as corrected by Corrigendum published on 5th January 2000 (O.J. No. L 2, 5.1.00, p.79).
(**9**) O.J. No. L 236, 23.9.03, p.33.
(**10**) O.J. No. L 362, 20.12.06, p.94.
(**11**) S.S.I. 2002/397, amended by S.S.I. 2004/90, 2005/616 and 2006/556.

Amendment to the Processed Cereal based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004

6.—(1) The Processed Cereal based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004(**12**) are amended in accordance with paragraph (2).

(2) In paragraph (1) of regulation 2 (interpretation), for the definition "the Directive" substitute the following definition–

> ""the Directive" means Commission Directive 2006/125/EC on processed cereal based foods and baby foods for infants and young children(**13**);".

St Andrew's House,
Edinburgh
12th September 2007

SHONA ROBISON
Authorised to sign by the Scottish Ministers

(**12**) S.S.I. 2004/8, to which there are amendments not relevant to these Regulations.
(**13**) O.J. No. L 339, 6.12.06, p.16.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, implement a number of Community instruments relating to foods for particular nutritional uses through amendment of a series of statutory instruments.

The following instruments are amended:

(a) The Infant Formula and Follow-on Formula Regulations 1995 (S.I.1995/77 as amended). Regulation 22 is amended to take account of the derogation in Article 1 of Commission Regulation (EC) No. 1609/2006 regarding compositional criteria of infant formulae (*regulation 2*);

(b) The Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997 (S.I. 1997/2182, as amended). This amendment implements Commission Directive 2007/29/EC amending Directive 96/8/EC as regards labelling, advertising or presenting foods intended for use in energy restricted diets for weight reduction (O.J. No. L 139, 31.5.07, p.22). Regulation 4 is amended to remove the restriction on using wording referring to "a reduction in the sense of hunger or an increase in the sense of satiety" in the labelling, advertising or presentation of food. Health claims that relate to such wording are now covered by Regulation (EC) No. 1924/2006 on nutrition and health claims made on foods (O.J. No. L 12, 18.1.07, p.3) (*regulation 3*);

(c) The Foods for Special Medical Purposes (Scotland) Regulations 2000 (S.S.I. 2000/130, as amended). Regulation 2 is amended to update a definition of a Commission Directive which has itself been amended. This implements Commission Directive

2006/82/EC adapting Directive 91/321/EEC on infant formulae and follow-on formulae and Directive

1999/21/EC on dietary foods for special medical purposes, by reason of the accession of Bulgaria and Romania (*regulation 4*);

(d) The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Scotland) Regulations 2002 (S.S.I. 2002/397, as amended). Regulation 3(5) is amended to allow the sale of certain foods until 1st January 2010. This implements Commission Directive

2007/26/EC amending Directive

2004/6/EC to extend its period of application (O.J. No. L 118, 8.5.07, p.5) (*regulation 5*); and

(e) The Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004 (S.S.I. 2004/8, as amended). Regulation 2 is amended to substitute a definition of Directive as the existing Directive (96/5/EC) referred to has now been repealed by Commission Directive

2006/125/EC on processed cereal-based foods and baby foods for infants and young children (*regulation 6*).

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.