

SCOTTISH STATUTORY INSTRUMENTS

2013 No. 266

The Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013

PART 1

Introductory

Modifications etc. (not altering text)

- C1** Pt. 1 applied in part (with modifications) (1.10.2023) by [The Windsor Framework \(Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions\) Regulations 2023 \(S.I. 2023/959\)](#), regs. 1(2), 4(b), **Sch. 2** (with regs. 7, 8)

Citation, extent and commencement

1. These Regulations may be cited as the Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013, extend to Scotland only and come into force on 31st October 2013.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990;

F1
...

“Regulation 2065/2003” means Regulation [\(EC\) No 2065/2003](#) of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods ^{M1};

“Regulation 1332/2008” means Regulation [\(EC\) No 1332/2008](#) of the European Parliament and of the Council on food enzymes ^{M2};

“Regulation 1333/2008” means Regulation [\(EC\) No 1333/2008](#) of the European Parliament and of the Council on food additives ^{M3}, as read with—

- (a) Commission Regulation (EU) No 1129/2011 amending Annex II to Regulation [\(EC\) No 1333/2008](#) of the European Parliament and of the Council by establishing a Union list of food additives ^{M4};
- (b) Commission Regulation (EU) No 1130/2011 amending Annex III to Regulation [\(EC\) No 1333/2008](#) of the European Parliament and of the Council on food additives by establishing a Union list of food additives for use in food additives, food enzymes, food flavourings and nutrients ^{M5}; and
- (c) Commission Regulation (EU) No 231/2012 laying down specifications for food additives listed in Annexes II and III to Regulation [\(EC\) No 1333/2008](#) of the European Parliament and of the Council ^{M6};

“Regulation 1334/2008” means Regulation (EC) No 1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods ^{M7}, as read with Commission Regulation (EU) No 873/2012 on transitional measures concerning the Union list of flavourings and source materials set out in Annex I to Regulation (EC) 1334/2008 of the European Parliament and of the Council ^{M8};

“authorised officer” means any person who is authorised in writing, either generally or specially, by a food authority to act in matters arising under these Regulations;

(2) Other expressions used in these Regulations and in the ^{F2}... instruments listed in paragraph (4) have the same meaning in these Regulations as they do in those instruments.

(3) Any reference in these Regulations to an Article of or Annex to any of the ^{F3}... instruments listed in paragraph (4) is a reference to that Article or Annex as amended from time to time.

(4) The [^{F4}instruments are] Regulation 2065/2003, Regulation (EC) No 1331/2008 of the European Parliament and of the Council establishing a common authorisation procedure for food additives, food enzymes and food flavourings ^{M9}, Regulation 1332/2008, Regulation 1333/2008 and Regulation 1334/2008.

(5) The expression “the [^{F5}assimilated] Regulations” means Regulation 2065/2003, Regulation 1332/2008, Regulation 1333/2008 and Regulation 1334/2008.

Textual Amendments

- F1** Words in reg. 2(1) omitted (9.2.2023) by virtue of The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/373), regs. 1(1), **8(2)(a)**
- F2** Word in reg. 2(2) omitted (9.2.2023) by virtue of The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/373), regs. 1(1), **8(2)(b)**
- F3** Word in reg. 2(3) omitted (9.2.2023) by virtue of The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/373), regs. 1(1), **8(2)(c)**
- F4** Words in reg. 2(4) substituted (9.2.2023) by The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/373), regs. 1(1), **8(2)(d)**
- F5** Word in reg. 2(5) substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), **sch. 2 para. 26(2)**

Marginal Citations

- M1** OJ L 309, 26.11.2003, p.1. This instrument was amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ L 188, 18.7.2009, p.14).
- M2** OJ L 354, 31.12.2008, p.7. This instrument was last amended by Commission Regulation (EU) No 1056/2012 (OJ L 313, 13.11.2012, p.9).
- M3** OJ L 354, 31.12.2008, p.16. This instrument was last amended by Commission Regulation (EU) No 739/2013 (OJ L 204, 31.7.2013, p.35.).
- M4** OJ L 295, 12.11.2011, p.1.
- M5** OJ L 295, 12.11.2011, p.178.
- M6** OJ L 83, 22.3.2012, p.1. This instrument was last amended by Commission Regulation (EU) No. 497/2013 (OJ L 143, 30.5.2013, p.20).
- M7** OJ L 354, 31.12.2008, p.34. This instrument was last amended by Commission Regulation (EU) No 545/2013 (OJ L 163, 14.06.2013, p.15).
- M8** OJ L 267, 2.10.2012, p.162.
- M9** OJ L 354, 31.12.2008, p.1. This instrument is implemented by Commission Regulation (EU) No 234/2011 (OJ L 64, 11.03.2011, p.15) and that Regulation has been amended by Commission Implementing Regulation (EU) No 562/2012 (OJ L 168, 28.06.12, p.21).

PART 2

Food additives, flavourings and enzymes

Offence of contravening EU requirements on food additives

3. Any person who contravenes, or who uses or places on the market a product that fails to comply with, any of the provisions of Regulation 1333/2008 specified in the first column of Schedule 1, as read with transitional measures contained in or to be read with that Regulation, commits an offence.

Offence of contravening EU requirements on flavourings, including smoke flavourings

4. Any person who contravenes, or who uses or places on the market a product which fails to comply with, any of the provisions of Regulation 1334/2008 specified in the first column of Schedule 2, as read with Article 4 (flavouring substances under evaluation) of Commission Implementing Regulation (EU) No 872/2012 adopting the list of flavouring substances provided for by Regulation (EC) No 2232/96 of the European Parliament and of the Council ^{M10} and with transitional measures contained in or to be read with Regulation 1334/2008, commits an offence.

Marginal Citations

M10 OJ L 267, 2.10.2012, p.1.

5. Any person who contravenes, or who uses or places on the market a product which fails to comply with, any of the provisions of Regulation 2065/2003 specified in the first column of Schedule 3, as read with Article 20 (transitional measures) of that Regulation, commits an offence.

Offence of contravening EU requirements on food enzymes

6. Any person who contravenes, or who uses or places on the market a product which fails to comply with, any of the provisions of Regulation 1332/2008 specified in the first column of Schedule 4, as read with Articles 18 and 24 (transitional measures) of that Regulation, commits an offence.

PART 3

Extraction solvents

Modifications etc. (not altering text)

C2 Pt. 3 applied in part (with modifications) (1.10.2023) by [The Windsor Framework \(Retail Movement Scheme: Public Health, Marketing and Organic Product Standards and Miscellaneous Provisions\) Regulations 2023 \(S.I. 2023/959\)](#), regs. 1(2), 4(b), [Sch. 2](#) (with regs. 7, 8)

Controls on extraction solvents

F67.

Textual Amendments

- F6** Reg. 7 omitted (9.2.2023) by virtue of The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/373), regs. 1(1), **8(3)**

8. The provisions of this Part do not apply to any extraction solvent—
- (a) used in the production of any food additives, vitamins or any other nutritional additives, unless such food additives, vitamins or other nutritional additives are listed in [^{F7}schedule 6]; or
 - (b) intended for export outside [^{F8}Great Britain].

Textual Amendments

- F7** Words in reg. 8(a) substituted (9.2.2023) by The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/373), regs. 1(1), **8(4)**
- F8** Words in reg. 8(b) substituted (31.12.2020) by The Food Composition, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/53), reg. **6(2)** (as substituted by S.S.I. 2020/372, regs. 1(2)(a), **6(2)**)

9. In this Part “permitted extraction solvent” means—
- (a) an extraction solvent that—
 - (i) is listed in [^{F9}schedule 6];
 - (ii) is used in accordance with the conditions of use and within any maximum residue limits specified in [^{F10}schedule 6];
 - (iii) does not contain a toxicologically dangerous amount of any element or substance; [^{F11}and]
 - (iv) subject to any exceptions deriving from specific purity criteria, does not contain more than 1 mg/kg of arsenic or more than 1 mg/kg lead; ^{F12}...
 - ^{F13}(v)
 - (b) water to which substances regulating acidity or alkalinity may have been added; or
 - (c) food substances which possess solvent properties.

Textual Amendments

- F9** Words in reg. 9(a)(i) substituted (9.2.2023) by The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/373), regs. 1(1), **8(5)(a)**
- F10** Words in reg. 9(a)(ii) substituted (9.2.2023) by The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/373), regs. 1(1), **8(5)(b)**
- F11** Word in reg. 9(a)(iii) inserted (9.2.2023) by The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/373), regs. 1(1), **8(5)(c)**
- F12** Word in reg. 9(a)(iv) omitted (9.2.2023) by virtue of The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/373), regs. 1(1), **8(5)(d)**
- F13** Reg. 9(a)(v) omitted (9.2.2023) by virtue of The Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/373), regs. 1(1), **8(5)(e)**

10. No person may use as an extraction solvent in the production of food any extraction solvent that is not a permitted extraction solvent.

11.—(1) No person may place on the market—

- (a) an extraction solvent that is not a permitted extraction solvent; or
- (b) any food having in it or on it an added extraction solvent that is not a permitted extraction solvent.

(2) No person may place on the market an extraction solvent that does not meet the requirements of regulation 12.

12.—(1) Subject to paragraph (2), the following information must appear on the packaging, container or label—

- (a) the commercial name as indicated in [F14]schedule 6];
- (b) a clear indication that the material is of a quality suitable for use for the extraction of food or food ingredients;
- (c) a reference by which the batch or lot may be identified;
- (d) the name or business name and address of the manufacturer or packer or of a seller established in the [F15]United Kingdom];
- (e) the net quantity given as units of volume; and
- (f) if necessary, the special storage conditions or conditions of use.

(2) The particulars specified in subparagraphs (c), (d), (e) and (f) of paragraph (1) may alternatively appear on the trade documents relating to the batch or lot which are to be supplied with, or prior to, the delivery.

(3) The information specified in paragraph (1) must be easily visible, clearly legible and indelible.

(4) The information specified in paragraph (1) may be provided in more than one language, but at least one of those languages must be easily understood by the purchaser unless other measures have been taken to ensure that the purchaser is informed of the specified information.

Textual Amendments

F14 Words in [reg. 12\(1\)\(a\)](#) substituted (9.2.2023) by [The Food and Feed \(Miscellaneous Amendments\) \(Scotland\) Regulations 2022 \(S.S.I. 2022/373\)](#), regs. 1(1), **8(6)**

F15 Words in [reg. 12\(1\)\(d\)](#) substituted (31.12.2020) by [The Food Composition, Labelling and Standards \(EU Exit\) \(Scotland\) \(Amendment\) Regulations 2019 \(S.S.I. 2019/53\)](#), regs. 1(1), **6(3)**; 2020 c. 1, Sch. 5 para. 1(1)

PART 4

Administration and enforcement

[F16] Authority]

13. The ^{F17}... authority for the purpose of Article 7 of Regulation 2065/2003 is [F18]the Food Standards Scotland].

Textual Amendments

- F16** Reg. 13 heading substituted (31.12.2020) by The Food Composition, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/53), regs. 1(1), **6(4)**; 2020 c. 1, **Sch. 5 para. 1(1)**
- F17** Word in reg. 13 omitted (31.12.2020) by virtue of The Food Composition, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019 (S.S.I. 2019/53), regs. 1(1), **6(4)**; 2020 c. 1, Sch. 5 para. 1(1)
- F18** Words in reg. 13 substituted (1.4.2015) by The Food (Scotland) Act 2015 (Consequential and Transitional Provisions) Order 2015 (S.S.I. 2015/100), arts. 1(2), 2, **sch. para. 35**

Enforcement authorities

14. It is the duty of each food authority within its area to execute and enforce these Regulations and the ^{F19}assimilated] Regulations.

Textual Amendments

- F19** Word in reg. 14 substituted (1.1.2024) by The Retained EU Law (Revocation and Reform) Act 2023 (Consequential Amendments) (Scotland) Regulations 2023 (S.S.I. 2023/374), reg. 1(1), **sch. 2 para. 26(3)**

Offences and penalties

15.—(1) Any person who contravenes regulation 10 or 11 commits an offence.

(2) Any person who commits an offence under regulation 3, 4, 5, 6 or 15(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

^{F20}Transitional provision: withdrawal from the EU

15A. A person is to be considered not to have contravened regulation 11(2), as it applies to regulation 12(1)(d), in the following circumstances—

- (a) an extraction solvent has the name or business name and address of the manufacturer or packer, or of a seller established in the territory of the European Union, appearing on the packaging, container or label,
- (b) this would have complied with regulation 11(2), as it applies to regulation 12(1)(d) immediately before IP completion day, and
- (c) the extraction solvent is placed on the market no later than ^{F21}31 December 2023].]

Textual Amendments

- F20** Reg. 15A inserted (31.12.2020) by S.S.I. 2019/285, regs. 1(1), **4(2)** (as amended by The Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 (S.S.I. 2020/372), regs. 1(2)(a), **9(4)**); 2020 c. 1, **Sch. 5 para. 1(1)**
- F21** Words in reg. 15A(c) substituted (30.9.2022) by The Food Information (Transitional Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2022 (S.S.I. 2022/265), regs. 1(1), **11**

Condemnation of food

16.—(1) Paragraph (2) applies where it appears to an authorised officer that—

- (a) a product fails to comply with any of the requirements specified in the first column of Schedule 1, as read with transitional measures contained in or to be read with Regulation 1333/2008;
- (b) a product fails to comply with any of the requirements specified in the first column of Schedule 2, as read with Article 4 of Commission Implementing Regulation (EU) No 872/2012 and as read with transitional measures contained in or to be read with Regulation 1334/2008;
- (c) a product fails to comply with any of the requirements specified in the first column of Schedule 3, as read with Article 20 of Regulation 2065/2003;
- (d) a product fails to comply with any of the requirements specified in the first column of Schedule 4, as read with Articles 18 and 24 of Regulation 1332/2008; or
- (e) a food is placed on the market in contravention of the prohibition in regulation 11(1)(b).

(2) Where this paragraph applies, subsections (3) to (9) of section 9 of the Act apply with the following modifications—

- (a) references to “food” are to be read as including a reference to “product”;
- (b) references to “food safety requirements” are to be read as including a reference to—
 - (i) any of the requirements referred to in sub-paragraphs (1)(a) to (d);
 - (ii) the prohibition referred to in sub-paragraph (1)(e).

Application of various provisions of the Food Safety Act 1990

17.—(1) The following provisions of the Act 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 20 (offences due to fault of another person);
- (b) section 21 (defence of due diligence) ^{M11} with the modification that—
 - (i) subsections (2) to (4) apply in relation to an offence under regulation 3, 4, 5, 6 or 15 as they apply in relation to an offence under section 14 or 15; and
 - (ii) in subsection (4) the references to “sale” are deemed to include references to “placing on the market”;
- (c) section 30(8) (which relates to documentary evidence);
- (d) section 35(1) (punishment of offences), in so far as it relates to offences under section 33(1) as applied by paragraph (2)(b);
- (e) section 35(2) and (3) ^{M12}, in so far as it relates to offences under section 33(2) as applied by paragraph (2)(c);
- (f) section 36 (offences by bodies corporate); and
- (g) section 36A (offences by Scottish partnerships) ^{M13}.

(2) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act is to be construed as including a reference to the [F22assimilated] Regulations and these Regulations—

- (a) section 3 (presumption that food intended for human consumption) with the modification that the references to “sold” and “sale” are deemed to include references to “placed on the market” and “placing on the market” respectively;

- (b) section 33(1) (obstruction etc. of officers);
- (c) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above” is deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (b); and
- (d) section 44 (protection of officers acting in good faith).

(3) Section 34 of the Act (time limit for prosecutions) applies to offences under these Regulations as it applies to offences punishable under section 35(2) of the Act.

Textual Amendments

F22 Word in [reg. 17\(2\)](#) substituted (1.1.2024) by [The Retained EU Law \(Revocation and Reform\) Act 2023 \(Consequential Amendments\) \(Scotland\) Regulations 2023 \(S.S.I. 2023/374\)](#), [reg. 1\(1\)](#), **sch. 2 para. 26(4)**

Marginal Citations

- M11** [Section 21](#) was amended by [S.I. 2004/3279](#).
- M12** [Section 35\(3\)](#) was amended by [S.I. 2004/3279](#).
- M13** [Section 36A](#) was inserted by the [Food Standards Act 1999 \(c.28\)](#), [Schedule 5](#), paragraph 16.

PART 5

General

Consequential and other amendments

18.—^{F23}(1)

(2) In regulation 2(1) (interpretation) of the Jam and Similar Products (Scotland) Regulations 2004 ^{M14}, in the definition of “permitted sweetener” for the expression “the Food Additives (Scotland) Regulations 2009” substitute “ Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives ”.

Textual Amendments

F23 [Reg. 18\(1\)](#) revoked (13.12.2014) by [The Food Information \(Scotland\) Regulations 2014 \(S.S.I. 2014/312\)](#), [reg. 1\(2\)](#), **sch. 4 Pt. 1**

Marginal Citations

M14 [S.S.I. 2004/133](#); the relevant amendment is [S.S.I. 2009/436](#).

Revocations

19. The instruments listed in the first column of Schedule 5 are revoked to the extent specified in the second column.

St Andrew's House,
Edinburgh

MICHAEL MATHESON
Authorised to sign by the Scottish Ministers

Changes to legislation:

There are currently no known outstanding effects for the The Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013.