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## STATUTORY INSTRUMENTS

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**2009 No. 3238**

### **FOOD, ENGLAND**

#### **The Food Additives (England) Regulations 2009**

<i>Made</i>	- - - -	<i>7th December 2009</i>
<i>Laid before Parliament</i>		<i>11th December 2009</i>
<i>Coming into force</i>	- -	<i>20th January 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 17(1) and (2), 26(1)(a) and (b), (2)(e) and (3), and 48(1) of the Food Safety Act 1990 <sup>F1</sup>, and now vested in him <sup>F2</sup>, and paragraph 1A of Schedule 2 to the European Communities Act 1972 <sup>F3</sup>.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for any reference to an Annex to an EU instrument that is specified in regulation 2(6) to be construed as a reference to that Annex as amended from time to time.

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

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 <sup>F4</sup>, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

**F1** 1990 c. 16; section 1(1) and (2) (definition of “food”) was substituted by [S.I. 2004/2990](#). Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the [Food Standards Act 1999](#) (1999 c.28) “the 1999 Act”. Section 48 was also amended by [S.I. 2004/2990](#). Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 53(2) was amended by paragraph 19 of Schedule 16 to the [Deregulation and Contracting Out Act 1994](#) (1994 c.40), [Schedule 6](#) to the 1999 Act, [S.I. 2004/2990](#) and [S.I. 2004/3279](#).

**F2** Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the 1999 Act. Functions of “the Ministers” so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the 1999 Act and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the [Government of Wales Act 2006](#) (2006 c.32). Those functions, so far as exercisable in relation to Scotland, were

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transferred to the Scottish Ministers by section 53 of the [Scotland Act 1998 \(1998 c. 46\)](#) as read with section 40(2) of the 1999 Act.

**F3** [1972 c.68](#), Paragraph 1A of Schedule 2 was inserted by section 28 of the [Legislative and Regulatory Reform Act 2006 \(2006 c.51\)](#).

**F4** OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny - Part Four (OJ No. L188, 18.7.2009, p.14).

## Title, application and commencement

1. These Regulations may be cited as the Food Additives (England) Regulations 2009, apply in relation to England only and come into force on 20th January 2010.

## Interpretation

2.—(1) In these Regulations —

“acid” means any substance which increases the acidity of a food and/or imparts a sour taste to it;

“acidity regulator” means any substance which alters or controls the acidity or alkalinity of a food;

“the Act” means the Food Safety Act 1990;

“anti-caking agent” means any substance which reduces the tendency of individual particles of a food to adhere to each other;

“anti-foaming agent” means any substance which prevents or reduces foaming;

“antioxidant” means any substance which prolongs the shelf-life of a food by protecting it against deterioration caused by oxidation, including fat rancidity and colour changes;

“bulking agent” means any substance which contributes to the volume of a food without contributing significantly to its available energy value;

“carrier” and “carrier solvent” have the meanings respectively given to them in Directive 95/2;

“colour” has the meaning given to it in Directive 94/36;

“Directive 88/388” means Council Directive [88/388/EEC](#) on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production <sup>F5</sup>;

“Directive 94/35” means European Parliament and Council Directive [94/35/EC](#) on sweeteners for use in foodstuffs <sup>F6</sup>;

“Directive 94/36” means European Parliament and Council Directive [94/36/EC](#) on colours for use in foodstuffs <sup>F7</sup>;

“Directive 95/2” means European Parliament and Council Directive [95/2/EC](#) on food additives other than colours and sweeteners <sup>F8</sup>;

“Directive 08/60” means Commission Directive [2008/60/EC](#) laying down specific purity criteria concerning sweeteners for use in foodstuffs <sup>F9</sup>[<sup>F10</sup>as amended by Commission Directive 2010/37/EU amending Directive 2008/60 laying down specific purity criteria on sweeteners];

“Directive 08/84” means Commission Directive [2008/84/EC](#) laying down specific purity criteria on food additives other than colours and sweeteners <sup>F11</sup>[<sup>F12</sup>as amended by Commission

Directive 2010/67/EU amending Directive 2008/84 laying down specific purity criteria on food additives other than colours or sweeteners];

“Directive 08/128” means Commission Directive 2008/128/EC laying down specific purity criteria concerning colours for use in foodstuffs <sup>F13</sup>[<sup>F14</sup>as amended by Commission Directive 2011/3/EU amending Directive 2008/128/EC laying down specific purity criteria on colours for use in foodstuffs];

“Directive 09/39” means Directive 2009/39/EC of the European Parliament and of the Council on foodstuffs for particular nutritional uses (recast) <sup>F15</sup>;

“emulsifier” means any substance which makes it possible to form or maintain a homogenous mixture of two or more immiscible phases, such as oil and water, in a food;

“emulsifying salt” means any substance which converts proteins contained in cheese into a dispersed form, thereby bringing about homogenous distribution of fat and other components;

“firming agent” means any substance which makes or keeps tissues of fruit or vegetables firm or crisp or which interacts with a gelling agent to produce or strengthen a gel;

“flavour enhancer” means any substance which enhances the existing taste and/or odour of a food;

“flavouring” has the meaning that it bears in Article 1.2 of Directive 88/388;

“flour treatment agent” means a substance added to flour or dough to improve its baking quality, but does not include any emulsifier;

“foaming agent” means any substance which makes it possible to form a homogenous dispersion of a gaseous phase in a liquid or solid food;

“food” means food sold, or intended for sale, for human consumption and, for the purposes of regulation 16 and in regulation 17, includes a colour, a sweetener and a food additive;

“food additive”—

- (a) subject to paragraphs (b) and (c), means any substance, whether or not it has nutritive value, that is not normally consumed as a food in itself or used as a characteristic ingredient of food, and which, if added intentionally for a technological purpose to food in its manufacture, processing, preparation, treatment, packaging, transport or storage, results, or may reasonably be expected to result, in the substance or its by-products becoming directly or indirectly a component the food concerned;
- (b) in the definition of “food” and for the purposes of regulations 8 to 10, 16 and 17, includes a carrier or carrier solvent; and
- (c) for the purposes of regulations 8 to 10, does not include—
  - (i) any substance used for the treatment of drinking water as provided for in Council Directive 98/83/EC on the quality of water intended for human consumption <sup>F16</sup>,
  - (ii) any product containing pectin and derived from dried apple pomace or peel of citrus fruit, or from a mixture of both, by the action of dilute acid followed by partial neutralisation with sodium or potassium salts (liquid pectin),
  - (iii) chewing gum bases,
  - (iv) white or yellow dextrin, roasted or dextrinated starch, starch modified by acid or alkali treatment, bleached starch, physically modified starch and starch treated by amylolytic enzymes,
  - (v) ammonium chloride,
  - (vi) blood plasma, edible gelatine, protein hydrolysates and their salts, milk protein and gluten,

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- (vii) amino acids and their salts (other than glutamic acid, glycine, cysteine and cystine and their salts) having no additive function,
- (viii) caseinates and casein, and
- (ix) inulin;

“food authority”, subject to paragraph (3), has the meaning that it bears by virtue of section 5(1) of the Act, except that it does not include the appropriate Treasurer referred to in section 5(1) (c) of the Act (which deals with the Inner Temple and Middle Temple);

“food for infants or young children” means food covered by Article 1.1, 2 and 3(c) of Directive 09/39, but also includes any food for infants or young children who are not in good health;

“gelling agent” means any substance which gives a food texture through the formation of a gel;

“glazing agent” means any substance which, when applied to the external surface of a food, imparts a shiny appearance or provides a protective coating, and includes lubricants;

“humectant” means any substance which prevents a food from drying out by counteracting the effect of an atmosphere having a low degree of humidity, or which promotes the dissolution of a powder in an aqueous medium;

“infants” means children under the age of one year;

“miscellaneous additive” means any food additive which is used or intended to be used primarily as an acid, acidity regulator, anti-caking agent, anti-foaming agent, antioxidant, bulking agent, carrier, carrier solvent, emulsifier, emulsifying salt, firming agent, flavour enhancer, flour treatment agent, foaming agent, gelling agent, glazing agent, humectant, modified starch, packaging gas, preservative, propellant, raising agent, sequestrant, stabiliser or thickener, but does not include any processing aid or any enzyme except invertase or lysozyme;

“modified starch” means any substance obtained by one or more chemical treatments of edible starch, which may have undergone a physical or enzymatic treatment, and may be acid or alkali thinned or bleached;

“packaging gas” means any gas, other than air, which is introduced into a container before, during or after the placing of a food in that container;

[<sup>F17</sup>“permitted colour” means —

- (a) before 1st December 2012, any colour listed in Annex I to Directive 94/36 which satisfies the specific purity criteria for that colour set out in the Annex to Directive 08/128;
- (b) on or after 1st December 2012, any colour listed in Annex I to Directive 94/36 which satisfies the specific purity criteria for that colour set out in the Annex to Regulation 231/2012;]

“permitted miscellaneous additive” means any miscellaneous additive listed in Annex I, III, IV or V of Directive 95/2 which satisfies the purity criteria (if any) for that additive;

[<sup>F18</sup>“permitted sweetener” means —

- (a) before 1st December 2012 —
  - (i) any sweetener specified in the second column of the Annex to Directive 94/35 which satisfies the specific purity criteria for that sweetener set out in Annex I to Directive 08/60, or
  - (ii) in the case of E960 steviol glycosides, a sweetener which satisfies the purity criteria for that sweetener set out in the Annex to Regulation 231/2012;
- (b) on or after 1st December 2012 —
  - (i) any sweetener specified in the second column of the Annex to Directive 94/35, or

## (ii) E960 steviol glycosides

which satisfies the specific purity criteria for that sweetener set out in the Annex to Regulation 231/2012;]

“placing on the market” has the meaning given to it in Article 3.8 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;

“preservative” means any substance which prolongs the shelf-life of a food by protecting it against deterioration caused by micro-organisms;

“processing aid” means any substance not consumed as a food by itself, which is intentionally used in the processing of raw materials, foods or their ingredients to fulfil a certain technological purpose during treatment or processing and which may result in the unintentional but technically unavoidable presence of residues of the substance or its derivatives in the final product, but only if those residues do not present any health risk and do not have any technological effect on the finished product;

“propellant” means any gas, other than air, which expels a food from a container;

[<sup>F19</sup>“purity criteria”, in relation to a miscellaneous additive, means —

- (a) before 1st December 2012, the purity criteria set out in relation to that additive in Annex I to Directive 08/84 or, in the case of E1205 basic methacrylate copolymer, in the Annex to Regulation 231/2012;
- (b) on or after 1st December 2012, the purity criteria set out in relation to that additive in the Annex to Regulation 231/2012;]

“raising agent” means any substance or combination of substances which liberates gas and thereby increases the volume of a dough or a batter;

“Regulation 1333/2008” means Regulation (EC) No.1333/2008 of the European Parliament and of the Council on food additives <sup>F20</sup>[<sup>F21</sup>as read with Regulation 231/2012 ];

[<sup>F22</sup>“Regulation 1129/2011” means 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, as read with Commission Regulation (EU) No. 1131/2011 amending Annex II to Regulation (EC) No. 1333/2008 of the European Parliament and of the Council with regard to steviol glycosides;

“Regulation 1130/2011” means 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 approved for use in food additives, food enzymes, food flavourings and nutrients;

“Regulation 231/2012” means 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;]

“relevant food additive” means any miscellaneous additive, colour or sweetener, or an enzyme which is not acting as a processing aid;

“sell” includes possess for sale, and offer, expose or advertise for sale, and “sale” and “sold” shall be construed accordingly;

“sequestrant” means any substance which forms a chemical complex with metallic ions;

“specified permitted colour” means any permitted colour other than—

- (d) E123 Amaranth;
- (e) E127 Erythrosine;

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- (f) E128 Red 2G;
- (g) E154 Brown FK;
- (h) E160b Annatto, bixin, norbixin;
- (i) E161g Canthaxanthin;
- (j) E173 Aluminium; and
- (k) E180 Litholrubine BK;

“specified Regulation 1333/2008 provision” means any provision of Regulation 1333/2008 that is specified in the first column of the Schedule and whose subject-matter is described in the second column of the Schedule;

“stabiliser” has the meaning given to it in Directive 95/2;

“sweetener” means any food additive which is used or intended to be used—

- (l) to impart a sweet taste to food; or
- (m) as a table-top sweetener;

“thickener” means any substance which increases the viscosity of a food; and

“young children” means children aged between one and three years.

(2) Other expressions used in these Regulations and in Directive 94/35, 94/36 or 95/2 have, in so far as the context admits, the same meaning as they bear in the Directive concerned.

(3) Where any functions under the Act are assigned—

- (a) by an order under section 2 or 7 of the Public Health (Control of Disease) Act 1984 <sup>F23</sup>, to a port health authority;
- (b) by an order under section 6 of the Public Health Act 1936 <sup>F24</sup>, to a joint board for a united district; or
- (c) by an order under paragraph 15(6) of Schedule 8 to the Local Government Act 1985 <sup>F25</sup>, to a single authority for a metropolitan county,

any reference in these Regulations to a food authority shall be construed, so far as relating to those functions, as a reference to the authority to whom they are so assigned.

(4) Any reference in these Regulations to—

- (a) a maximum level of permitted colour in or on a food is a reference to the maximum amount, in milligrams, of colouring principle contained in that permitted colour per kilogram or, as the case may be, per litre, of food which is ready to eat and which has been prepared according to any instructions for use;
- (b) a maximum level of permitted miscellaneous additive in or on a food, or in respect of a food additive, is a reference to the maximum level of that permitted miscellaneous additive in or on the food, or in respect of the food additive, as sold, unless otherwise indicated; or
- (c) *quantum satis*, means, in relation to the use of permitted colours or permitted miscellaneous additives in or on food, that no maximum level of permitted colour or permitted miscellaneous additive has been laid down for use in or on certain food but that a permitted colour or, permitted miscellaneous additive may be used in or on the food in accordance with good manufacturing practice at a level not higher than is necessary to achieve the intended purpose and only if such use does not mislead the consumer.

(5) Any reference in these Regulations to an Annex to an EU instrument that is specified in paragraph (6) is a reference to that Annex as amended from time to time,

[<sup>F26</sup>(6) The EU instruments are Directive 94/35, Directive 95/2, Regulation 1333/2008 and Regulation 231/2012.]

- F5** OJ No. L184, 15.7.1988, p.61, as last amended by Regulation (EC) No. 1882/2003 of the European Parliament and of the Council adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (OJ No. L284, 31.10.2003, p.1).
- F6** OJ No. L237, 10.9.1994, p.3, as last amended by Directive 2006/52/EC of the European Parliament and of the Council amending Directive 95/2/EC on food additives other than colours and sweeteners and Directive 94/35/EC on sweeteners for use in foodstuffs. (OJ No. L204, 20.7.2006, p.10).
- F7** OJ No. L237, 10.9.1994, p.13.
- F8** OJ No. L61, 18.3.1995, p.1, as read with the Corrigendum at OJ No. L248, 14.10.1995, p.60 and as last amended by Directive 2006/52/EC.
- F9** OJ No. L158, 18.6.2008, p.1.
- F10** Words in reg. 2(1) added (31.3.2011) by [The Food Additives \(England\) \(Amendment\) Regulations 2011 \(S.I. 2011/258\)](#), regs. 1, **2(2)(a)**
- F11** OJ No. L253, 20.9.2008, p.1, amended by Commission Directive 2009/10/EC amending Directive 2008/84/EC laying down specific purity criteria on food additives other than colours and sweeteners (OJ No. L44, 14.2.2009, p.62).
- F12** Words in reg. 2(1) added (31.3.2011) by [The Food Additives \(England\) \(Amendment\) Regulations 2011 \(S.I. 2011/258\)](#), regs. 1, **2(2)(b)**
- F13** OJ No. L6, 10.1.2009, p.20.
- F14** Words in reg. 2(1) added (1.7.2011 for specified purposes, 1.9.2011 in so far as not already in force) by [The Food Additives \(England\) \(Amendment\) \(No.2\) Regulations 2011 \(S.I. 2011/1456\)](#), **regs. 2(2), 3(1)(a)(b)**
- F15** OJ No. L124, 20.05.2009, p.21.
- F16** OJ No. L330, 5.12.1998, p.32.
- F17** Words in reg. 2(1) substituted (23.5.2012) by [The Food Additives \(England\) \(Amendment\) and the Extraction Solvents in Food \(Amendment\) \(England\) Regulations 2012 \(S.I. 2012/1155\)](#), regs. 1, **2(2)(a)**
- F18** Words in reg. 2(1) substituted (23.5.2012) by [The Food Additives \(England\) \(Amendment\) and the Extraction Solvents in Food \(Amendment\) \(England\) Regulations 2012 \(S.I. 2012/1155\)](#), regs. 1, **2(2)(b)**
- F19** Words in reg. 2(1) substituted (23.5.2012) by [The Food Additives \(England\) \(Amendment\) and the Extraction Solvents in Food \(Amendment\) \(England\) Regulations 2012 \(S.I. 2012/1155\)](#), regs. 1, **2(2)(c)**
- F20** OJ No. L354, 31.12.2008, p.16.
- F21** Words in reg. 2(1) inserted (23.5.2012) by [The Food Additives \(England\) \(Amendment\) and the Extraction Solvents in Food \(Amendment\) \(England\) Regulations 2012 \(S.I. 2012/1155\)](#), regs. 1, **2(2)(d)**
- F22** Words in reg. 2(1) inserted (23.5.2012) by [The Food Additives \(England\) \(Amendment\) and the Extraction Solvents in Food \(Amendment\) \(England\) Regulations 2012 \(S.I. 2012/1155\)](#), regs. 1, **2(2)(e)**
- F23** 1984 c.22; section 7(3)(d) was substituted by paragraph 27 of Schedule 3 to the [Food Safety Act 1990 \(1990 c.16\)](#).
- F24** 1936 c.49; section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.
- F25** 1985 c.51; paragraph 15(6) was amended by paragraph 31(b) of Schedule 3 to the Food Safety Act 1990.
- F26** Reg. 2(6) substituted (23.5.2012) by [The Food Additives \(England\) \(Amendment\) and the Extraction Solvents in Food \(Amendment\) \(England\) Regulations 2012 \(S.I. 2012/1155\)](#), regs. 1, **2(3)**

## Use of colours in or on food

<sup>F27</sup> 3. ....

*Status: Point in time view as at 13/12/2014.*

*Changes to legislation: There are currently no known outstanding effects for the The Food Additives (England) Regulations 2009. (See end of Document for details)*

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013](#) (S.I. 2013/2210), reg. 1, **Sch. 5**

## Health marking etc. of certain meat and meat products

<sup>F27</sup>**4.** . . . . .

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013](#) (S.I. 2013/2210), reg. 1, **Sch. 5**

## Use of colours on eggshells

<sup>F27</sup>**5.** . . . . .

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013](#) (S.I. 2013/2210), reg. 1, **Sch. 5**

## Sale of colours and food containing colours

<sup>F27</sup>**6.** . . . . .

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013](#) (S.I. 2013/2210), reg. 1, **Sch. 5**

## Transitional provision

<sup>F27</sup>**7.** . . . . .

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013](#) (S.I. 2013/2210), reg. 1, **Sch. 5**

## Use of miscellaneous additives

<sup>F27</sup>**8.** . . . . .

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013](#) (S.I. 2013/2210), reg. 1, **Sch. 5**

## Sale of food additives and food containing miscellaneous additives

<sup>F27</sup>**9.** . . . . .

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013](#) (S.I. 2013/2210), reg. 1, **Sch. 5**



**Transitional provisions and exemption****F27** 10. ....

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013 \(S.I. 2013/2210\)](#), reg. 1, **Sch. 5**

**Placing on the market and use of sweeteners****F27** 11. ....

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013 \(S.I. 2013/2210\)](#), reg. 1, **Sch. 5**

**Sale of food containing sweeteners****F27** 12. ....

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013 \(S.I. 2013/2210\)](#), reg. 1, **Sch. 5**

**Transitional provision****F27** 13. ....

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013 \(S.I. 2013/2210\)](#), reg. 1, **Sch. 5**

**Offences and penalties****F27** 14. ....

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013 \(S.I. 2013/2210\)](#), reg. 1, **Sch. 5**

**Execution and enforcement****F27** 15. ....

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013 \(S.I. 2013/2210\)](#), reg. 1, **Sch. 5**

**Application of various sections of the Food Safety Act 1990****F27** 16. ....

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013 \(S.I. 2013/2210\)](#), reg. 1, **Sch. 5**

*Status: Point in time view as at 13/12/2014.*

*Changes to legislation: There are currently no known outstanding effects for the The Food Additives (England) Regulations 2009. (See end of Document for details)*

## Condemnation of food

<sup>F27</sup>17. ....

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013 \(S.I. 2013/2210\)](#), reg. 1, **Sch. 5**

## Consequential amendments

18.—<sup>F27</sup>(1) .....

<sup>F27</sup>(2) .....

<sup>F27</sup>(3) .....

<sup>F28</sup>(4) .....

<sup>F27</sup>(5) .....

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013 \(S.I. 2013/2210\)](#), reg. 1, **Sch. 5**

**F28** Reg. 18(4) revoked (13.12.2014) by [The Products Containing Meat etc. \(England\) Regulations 2014 \(S.I. 2014/3001\)](#), regs. 1(2), **8(2)(a)** (with reg. 3)

## Amendment of the Specified Sugar Products (England) Regulations 2003

19. In the Specified Sugar Products (England) Regulations 2003 <sup>F29</sup>, for Note 7 to Schedule 1 (specified sugar products and their reserved descriptions) there is substituted the following note—

“7. Specified sugar products may contain any substance permitted pursuant to Directive [2009/32/EC](#) of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (Recast) <sup>F30</sup> or Regulation [\(EC\) No. 1333/2008](#) of the European Parliament and of the Council on food additives.”.

**F29** [S.I. 2003/1563](#), amended by [S.I. 2005/2626](#).

**F30** OJ No. L141, 6.6.2009, p.3.

## Revocations

<sup>F27</sup>20. ....

**F27** Regulations revoked in part (31.10.2013) by [The Food Additives, Flavourings, Enzymes and Extraction Solvents \(England\) Regulations 2013 \(S.I. 2013/2210\)](#), reg. 1, **Sch. 5**

Signed by authority of the Secretary of State for Health

Department of Health

Gillian Merron  
Minister of State,

## Regulation 2(1)

**Status:** Point in time view as at 13/12/2014.

**Changes to legislation:** There are currently no known outstanding effects for the  
The Food Additives (England) Regulations 2009. (See end of Document for details)

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

1. These Regulations apply in relation to England only. They revoke in so far as they apply to England the Food Additives Labelling Regulations 1992 (S.I. 1992/1978), the Sweeteners in Food Regulations 1995 (S.I. 1995/3123), the Colours in Food Regulations 1995 (S.I. 1995/3124) and the Miscellaneous Food Additives Regulations 1995 (S.I. 1995/3187) (each of which extends to the whole of Great Britain) and re-enact with changes and on a transitional basis certain provisions of the last three of those instruments.

2. These Regulations provide for the execution and enforcement in relation to England of Regulation (EC) No. 1333/2008 of the European Parliament and of the Council on food additives (OJ No. L354, 31.12.2008, p.16) (“the Regulation”) and give effect in England to Commission Directive 2009/10/EC amending Directive 2008/84/EC laying down specific purity criteria on food additives other than colours and sweeteners (OJ No. L44, 14.2.2009, p.62).

3. These Regulations prohibit—

- (a) the use in or on any food of any colour other than a permitted colour and the use of any permitted colour unless specified requirements are satisfied (the terms “colour” and “permitted colour” are defined in regulation 2(1)) (*regulation 3*);
- (b) the use for health marking and other marking of certain meat and meat products of colours other than certain permitted colours (*regulation 4*);
- (c) the use of a colour for the decorative colouring of eggshells or the marking of eggshells as provided for in a specified EU instrument other than a permitted colour (*regulation 5*);
- (d) the sale —
  - (i) of any colour for use in or on any food unless the colour is a permitted colour,
  - (ii) direct to consumers of any colour other than a specified permitted colour (the term “specified permitted colour” is defined in regulation 2(1)), or
  - (iii) of any food having in or on it any colour other than a permitted colour that has been used in or on the food without contravening specified provisions of these Regulations (*regulation 6*);
- (e) the use in or on any food of any miscellaneous additive other than a permitted miscellaneous additive (the terms “miscellaneous additive” and “permitted miscellaneous additive” are defined in regulation 2(1)) (*regulation 8(1)*);
- (f) subject to a specified EU provision, the use of a permitted miscellaneous additive listed elsewhere in the EU instrument in which that provision appears in or on a food listed in a specified part of that instrument (*regulation 8(2)*);

- (g) subject to a specified EU provision in the case of the prohibition imposed by regulation 8(3), the use of certain permitted miscellaneous additives in or on specified foods unless specified requirements are satisfied (*regulation 8(3), (4) and (5)*);
  - (h) the use of any miscellaneous additive primarily as a carrier or carrier solvent unless the additive is a permitted miscellaneous additive listed in a specified EU provision and its use complies with the restrictions, if any, mentioned in relation to the additive in that provision (the terms “carrier” and “carrier solvent” are defined in regulation 2(1)) (*regulation 8(6)*);
  - (i) subject to a specified EU provision, the use of any permitted miscellaneous additive in or on food for infants or young children unless it is listed in a specified EU provision and it is used only in accordance with the conditions contained in that provision (the term “food for infants or young children” is defined in regulation 2(1)) (*regulation 8(7)*);
  - (j) the use in or on any food for infants or young children of any relevant food additive in combination with a miscellaneous additive used primarily as a carrier or carrier solvent unless the miscellaneous food additive is listed in a specified EU provision and its presence in or on the food is in accordance with the conditions contained in that provision (the term “relevant food additive” is defined in regulation 2(1)) (*regulation 8(8)*);
  - (k) the sale of any miscellaneous additive for use in or on food other than a permitted miscellaneous additive (*regulation 9(1)*);
  - (l) the sale of any miscellaneous additive for use primarily as a carrier or carrier solvent unless the additive is a certain type of permitted miscellaneous additive (*regulation 9(2)*);
  - (m) the sale direct to consumers of any miscellaneous additive other than a permitted miscellaneous additive (*regulation 9(3)*);
  - (n) the sale of any food having in or on it any miscellaneous additive other than a permitted miscellaneous additive which has been used or is present in or on the food without contravening specified provisions of these Regulations (*regulation 9(4)*);
  - (o) the sale of any relevant food additive in combination with a miscellaneous additive used primarily as a carrier or carrier solvent unless the miscellaneous additive has been used in respect of the relevant food additive without contravening the requirements of regulation 8(6) (*regulation 9(5)*);
  - (p) the placing on the market of any sweetener intended for sale to the ultimate consumer or for use in or on any food other than a permitted sweetener (the terms “sweetener” and “permitted sweetener” are defined in regulation 2(1)) (*regulation 11(1)*);
  - (q) the use of any sweetener in or on any food other than a permitted sweetener which—
    - (i) is used in or on a food listed in a specified EU provision in an amount not exceeding the maximum usable dose for the sweetener that is listed in relation to that food in that provision, and
    - (ii) is listed in relation to that food in that provision (*regulation 11(2)*);
  - (r) the sale of any food having in or on it any sweetener other than a permitted sweetener which has been used in or on the food without contravening regulation 11(2) (*regulation 12*).
4. These Regulations also—
- (a) re-enact with changes on a transitional basis (see paragraph 1 above) certain provisions included in the Sweeteners in Food Regulations 1995, the Colours in Food Regulations 1995 and the Miscellaneous Food Additives Regulations 1995 (*regulations 7, 10 and 13*);
  - (b) provide that a person who contravenes or fails to comply with specified provisions of these Regulations or (subject to a transitional provision contained in Article 34 of the Regulation) the Regulation, is guilty of a summary offence and liable on conviction to a fine not exceeding level 5 on the standard scale (£5,000) (*regulation 14*);

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The Food Additives (England) Regulations 2009. (See end of Document for details)

- (c) make provision for the execution and enforcement of these Regulations and the Regulation (*regulation 15*);
  - (d) apply with modifications for the purposes of these Regulations certain provisions of the Food Safety Act 1990 (*regulation 16*);
  - (e) provide that, where food is certified as being food which it is an offence under these Regulations to use, sell or place on the market, the food will be treated for the purposes of section 9 of the Food Safety Act 1990 as failing to comply with food safety requirements (*regulation 17*);
  - (f) make consequential amendments to the Mineral Hydrocarbons in Food Regulations 1966 in so far as they apply in relation to England (S.I. 1966/1073), the Fruit Juices and Fruit Nectars (England) Regulations 2003 (S.I. 2003/1564), the Condensed Milk and Dried Milk (England) Regulations 2003 (S.I. 2003/1596), the Meat Products (England) Regulations 2003 (S.I. 2003/2075) and the Jam and Similar Products (England) Regulations 2003 (S.I. 2003/3120) (*regulation 18*); and
  - (g) make a minor amendment to the Specified Sugar Products (England) Regulations 2003 (S.I. 2003/1563) (*regulation 19*).
- 5.** A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Food Composition and Labelling Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH and is annexed to the explanatory memorandum which is available alongside the instrument on the OPSI website.

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**Changes to legislation:**

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