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## STATUTORY INSTRUMENTS

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**2010 No. 2817**

### **FOOD, ENGLAND**

#### **The Flavourings in Food (England) Regulations 2010**

*Made* - - - - 23rd November 2010

*Laid before Parliament* 26th November 2010

*Coming into force* - - 20th January 2011

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

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>(3)</sup>, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

#### **Title, application and commencement**

**1. These Regulations —**

- (a) may be cited as the Flavourings in Food (England) Regulations 2010;
- (b) apply in relation to England only; and

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- (1) 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](#).
- (2) 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 Food Standards Act 1999 ([1999 c. 28](#)). Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by [S.I. 1999/672](#) as read with section 40(3) of the 1999 Act and subsequently 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 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.
- (3) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by [Commission 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, p14).

(c) come into force on 20th January 2011.

## Interpretation

### 2.—(1) In these Regulations —

“the Act” means the Food Safety Act 1990;

“the EU Regulation” 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 and amending [Council Regulation \(EEC\) No. 1601/91](#), Regulations (EC) No.2232/96 and [\(EC\) No. 110/2008](#) and Directive [2000/13/EC](#)(4);

“authorised officer” means any person who is authorised in writing, either generally or specifically, by a food authority or as the case may be a port health authority to act in matters arising under these Regulations;

“food authority” does not include the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and the Middle Temple) nor a port health authority;

“port health authority” means —

- (a) in relation to the London port health district (within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984(5) by section 7(1) of that Act), the Common Council of the City of London; and
- (b) in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984, a port health authority for that district constituted by order under section 2(4) of that Act.

(2) Any other expression used in these Regulations and in the EU Regulation has the same meaning in these Regulations as it bears in the EU Regulation.

(3) Any reference in regulation 3 to a numbered Article is a reference to the Article so numbered in the EU Regulation.

## Offences and penalties

3.—(1) A person who contravenes or fails to comply with any of the EU provisions specified in paragraph (2) as read with the transitional arrangements contained in Article 30 is guilty of an offence.

### (2) The EU provisions are —

- (a) Article 4 (general conditions of use of flavourings or food ingredients with flavouring properties);
- (b) Article 5 (prohibition of non-compliant flavourings or non-compliant food);
- (c) Article 6(1) and (2) (restrictions on the presence of certain substances);
- (d) Article 7 (restrictions on the use of certain source materials);
- (e) Article 10 (restriction relating to the Community list of flavourings and source materials);
- (f) Article 14(1) (labelling of flavourings not intended for sale to the final consumer);
- (g) Article 17 (labelling of flavourings intended for sale to the final consumer); and
- (h) Article 19(2) and (3) (reporting obligations on food business operators).

(3) Anyone convicted of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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(4) OJ No. L354, 31.12.2008, p.34.

(5) [1984 c. 22](#).

## Enforcement authorities

4. It is the duty of each food authority within its area and each port health authority within its district to execute and enforce these Regulations and the EU Regulation.

## Application of various sections of the Food Safety Act 1990

5.—(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)(6) with the modification that —
  - (i) subsections (2) to (4) shall apply in relation to an offence of contravening regulation 3(2)(a) to (g) 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)(7), in so far as it relates to offences under section 33(1) as applied by paragraph (3)(b);
- (e) section 35(2) and (3)(8), in so far as it relates to offences under section 33(2) as applied by paragraph (3)(c);
- (f) section 36 (offences by bodies corporate); and
- (g) section 36A (offences by Scottish partnerships)(9).

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the references in subsection (1) to the Act are to be construed as including references to the EU Regulation.

(3) 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 EU Regulation and these Regulations —

- (a) section 3 (presumption that food is 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).

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

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(6) Section 21 was amended by [S.I. 2004/3279](#).

(7) Section 35(1) is amended by the Criminal Justice Act 2003 ([2003 c.44](#)), Schedule 26, paragraph 42, from a date to be appointed.

(8) Section 35(3) was amended by [S.I. 2004/3279](#).

(9) Section 36A was inserted by the Food Standards Act 1999 ([1999 c.28](#)), Schedule 5, paragraph 16.

## Condemnation of Food

6. Where any food is certified by a food analyst as being food which it is an offence under these Regulations to place on the market, that food shall be treated for the purposes of section 9 of the Act (under which a food may be seized and destroyed under an order of a justice of the peace) as failing to comply with food safety requirements.

## Amendments to the Food Labelling Regulations 1996

7.—(1) The Food Labelling Regulations 1996<sup>(10)</sup> are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2(1) (interpretation) —

(a) for the definition of “the additives regulations” substitute the following —

““the additives regulations” means the Food Additives (England) Regulations 2009, Regulation (EC) No. 1333/2008 of the European Parliament and of the Council on food additives and Regulation 1334/2008 on food flavourings;”;

(b) for the definition of “flavouring” when used as a noun substitute the following —

“the noun “flavouring” bears the same meaning as “flavourings” as defined in Article 3(2)(a) of Regulation 1334/2008 on food flavourings;”;

(c) the definitions of “flavouring preparation”, “flavouring substance”, “process flavouring” and “smoke flavouring” are omitted; and

(d) after the definition of “recommended daily allowance” insert the following definition —

““Regulation 1334/2008 on food flavourings” 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 and amending Council Regulation (EEC) No. 1601/91, Regulations (EC) No. 2232/96 and (EC) No. 110/2008 and Directive 2000/13/EC;”.

(3) In regulation 14 (names of ingredients) —

(a) for paragraph (5) substitute the following —

“(5) Subject to paragraph (5A) and to regulation 34B, where an ingredient being a flavouring is added to or used in a food it shall be identified by either —

(a) the word “flavouring” or, where more than one such ingredient is used, “flavourings”, or

(b) a more specific name or description of the flavouring; or

(c) the expression “smoke flavouring(s)” or “smoke flavouring(s) produced from (*insert name of food or food category or source*)” if the flavouring component contains smoke flavouring as defined by Article 3(2)(f) of Regulation 1334/2008 on food flavourings and imparts a smoky flavour to the food.”;

(b) for paragraph (6) substitute the following —

“(6) The word “natural” to describe an ingredient being a flavouring may only be used in accordance with Article 16 of Regulation 1334/2008 on food flavourings as read with Article 30 of that Regulation.”; and

(c) paragraphs (7) and (8) are omitted.

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<sup>(10)</sup> S.I. 1996/1499. Regulation 14(5) was previously amended by S.I. 2003/2647 and S.I. 2004/2824. Regulation 34B was amended by S.I. 2005/2057 and S.I. 2008/1188.

## Revocations

8. The Flavourings in Food Regulations 1992<sup>(11)</sup> and the Flavourings in Food (Amendment) Regulations 1994<sup>(12)</sup> are revoked in so far as they apply in relation to England.

Signed by authority of the Secretary of State for Health.

23rd November 2010

*Anne Milton*  
Parliamentary Under-Secretary of State,  
Department of Health

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<sup>(11)</sup> S.I. 1992/1971.  
<sup>(12)</sup> S.I. 1994/1486.

## EXPLANATORY NOTE

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

1. These Regulations provide for the execution and enforcement in England of 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 and amending [Council Regulation \(EEC\) No. 1601/91](#), Regulations (EC) No.2232/96 and [\(EC\) No. 110/2008](#) and Directive [2000/13/EC](#) (OJ No. L354, 31.12.2008, p.34) (“the EU Regulation”).

2. These Regulations provide that it is an offence to contravene the requirements of the EU Regulation by —

- (a) using flavourings or food ingredients with flavouring properties in or on foods if they pose a risk to the health of consumers or if their use misleads consumers (*regulation 3(2)(a)*);
- (b) placing on the market any flavouring or food ingredient with flavouring properties or food in which they are present if their use does not comply with the EU Regulation (*regulation 3(2)(b)*);
- (c) adding certain proscribed substances to food (*regulation 3(2)(c)*);
- (d) using certain proscribed source materials for the production of flavourings or food ingredients with flavouring properties, or using certain specified source materials other than in accordance with prescribed conditions (*regulation 3(2)(d)*);
- (e) placing on the market or using certain specified flavourings or source materials unless they are included in the authorised EU list (*regulation 3(2)(e)*);
- (f) labelling flavourings not intended for sale to the final consumer other than in accordance with the conditions set out in the EU Regulation (*regulation 3(2)(f)*);
- (g) labelling flavourings that are intended for sale to the final consumer other than in accordance with the conditions set out in the EU Regulation (*regulation 3(2)(g)*); and
- (h) failing to provide certain specified information when required (*regulation 3(2)(h)*).

3. These Regulations also —

- (a) designate the authorities having the duty to enforce these Regulations and the EU Regulation (*regulation 4*);
- (b) apply certain provisions of the Food Safety Act 1990 for the purposes of these Regulations (*regulation 5*);
- (c) provide that where food does not comply with the EU Regulation such that it would be an offence under these Regulations to place it on the market, it is to be treated as failing to comply with food safety requirements for the purposes of seizure and destruction under section 9 of the 1990 Act (*regulation 6*); and
- (d) make amendments to the Food Labelling Regulations 1996 (*regulation 7*).

4. 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 Additives branch of the Chemical Safety 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.

*Document Generated: 2023-05-04*

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