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WELSH STATUTORY INSTRUMENTS

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**2020 No. 89**

**The Infant Formula and Follow-on Formula (Wales) Regulations 2020**

**Title, commencement and application**

1.—(1) The title of these Regulations is the Infant Formula and Follow-on Formula (Wales) Regulations 2020.

(2) These Regulations come into force—

(a) except where sub-paragraph (b) applies, on 22 February 2020;

(b) on 22 February 2021 in respect of infant formula and follow-on formula manufactured from protein hydrolysates.

(3) These Regulations apply in relation to Wales.

**Commencement Information**

**II** Reg. 1 in force at 22.2.2020 for specified purposes at 22.2.2021 in so far as not already in force, see [reg. 1\(2\)](#)

**Interpretation**

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“the Delegated Regulation” (“*y Rheoliad Dirprwyedig*”) means Commission Delegated Regulation (EU) 2016/127 of 25 September 2015 supplementing Regulation (EU) No. 609/2013 of the European Parliament and of the Council as regards the specific compositional and information requirements for infant formula and follow-on formula and as regards requirements on information relating to infant and young child feeding <sup>M1</sup>;

“food authority” (“*awdurdod bwyd*”) has the meaning that it bears by virtue of section 5(1A) of the Act <sup>M2</sup>;

“specified EU law requirement” (“*gofyniad cyfraith UE penodedig*”) means any provision of the Delegated Regulation specified in column 1 of the table in Schedule 1, as read with any provision specified in the corresponding entry in column 2 of that table.

(2) Any reference to a provision of the Delegated Regulation is a reference to that provision as amended from time to time.

(3) Expressions used both in these Regulations and in the Delegated Regulation have the same meaning in these Regulations as they have in the Delegated Regulation.

#### Commencement Information

- I2** Reg. 2 in force at 22.2.2020 for specified purpose and at 22.2.2021 in so far as not already in force, see [reg. 1\(2\)](#)

#### Marginal Citations

- M1** OJ No. L 25, 2.2.2016, p. 1, as last amended by Commission Delegated Regulation (EU) 2019/828 (OJ No. L 137, 23.5.2019, p. 12).
- M2** [Section 5\(1A\)](#) was inserted by paragraph 16 of Schedule 9 to the [Local Government \(Wales\) Act 1994](#) (c. 19).

### Enforcement

3. Each food authority must execute and enforce these Regulations within its area.

#### Commencement Information

- I3** Reg. 3 in force at 22.2.2020 for specified purposes and at 22.2.2021 in so far as not already in force, see [reg. 1\(2\)](#)

### Application of provisions of the Act

4.—(1) Section 10(1) and (2) of the Act (improvement notices) applies, with the modification (in the case of section 10(1)) specified in Part 1 of Schedule 2, for the purposes of—

- (a) enabling an improvement notice to be served on a person requiring that person to secure compliance with any specified EU law requirement; and
- (b) making a failure to comply with a notice referred to in sub-paragraph (a) an offence.

(2) Section 32(1) to (8) of the Act <sup>M3</sup> (powers of entry) applies, with the modifications (in the case of section 32(1)) specified in Part 2 of Schedule 2, for the purposes of enabling an authorised officer of an enforcement authority—

- (a) to exercise a power of entry to ascertain whether food that does not comply with a specified EU law requirement is, or has been, sold; and
- (b) to exercise a power of entry to ascertain whether there is any evidence of any contravention of a specified EU law requirement.

(3) Section 35 of the Act (punishment of offences) applies, with the modifications specified in Part 3 of Schedule 2, for the purpose of specifying the punishment of an offence committed under section 10(2) as applied by paragraph (1)(b).

(4) Section 37 of the Act (appeals) applies, with the modifications specified in Part 4 of Schedule 2, for the purpose of enabling a person to appeal a decision to serve a notice referred to in paragraph (1)(a).

(5) Section 39 of the Act (appeals against improvement notices) applies, with the modifications (in the case of section 39(1) and (3)) specified in Part 5 of Schedule 2, for the purpose of dealing with appeals against a decision to serve a notice referred to in paragraph (1)(a).

(6) The provisions of the Act specified in paragraph (7) (“the paragraph (7) provisions”) apply, with the modifications specified in Part 6 of Schedule 2, for the purposes of these Regulations insofar as they relate to the provisions of the Act specified in and modified by paragraphs (1) to (5).

- (7) The provisions of the Act specified for the purposes of this paragraph are—

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21 <sup>M4</sup> (defence of due diligence);
- (d) section 22 (defence of publication in the course of business);
- (e) section 29 (procurement of samples);
- (f) section 30 <sup>M5</sup> (analysis etc. of samples);
- (g) section 33 <sup>M6</sup> (obstruction etc. of officers);
- (h) section 36 (offences by bodies corporate);
- (i) section 36A <sup>M7</sup> (offences by Scottish partnerships);
- (j) section 44 (protection of officers acting in good faith);
- (k) section 53 (general interpretation);

and any reference in the paragraph (7) provisions to a section of the Act, including a reference to “any of the preceding provisions of this Part”, is to be read as a reference to such sections of the Act that apply by virtue of, and with the modifications made by, these Regulations.

#### Commencement Information

- I4** Reg. 4 in force at 22.2.2020 for specified purposes and at 22.2.2021 in so far as not already in force, see [reg. 1\(2\)](#)

#### Marginal Citations

- M3** There are amendments to section 32(5) and (6), but none are relevant.
- M4** [Section 21](#) was amended by [S.I. 2004/3279](#).
- M5** [Section 30](#) was amended by paragraphs 7 and 8 of Schedule 5 to the 1999 Act.
- M6** [Section 33](#) was amended by paragraph 3(1) and (4) of the Schedule to the [Food \(Scotland\) Act 2015](#) ([asp 1](#)).
- M7** [Section 36A](#) was inserted by paragraph 16 of Schedule 5 to the 1999 Act.

#### Revocations, savings and transitional provisions

**5.—(1)** The instruments specified in column 1 of the table in Schedule 3 are revoked to the extent specified in column 3 of that table, subject to paragraph (2).

(2) The instruments specified in column 1 of the table in Schedule 3 continue to have effect (so far as otherwise revoked to the extent specified in column 3 of that table)—

- (a) until 21 February 2021 in respect of infant formula and follow-on formula manufactured from protein hydrolysates;
- (b) for the purposes of paragraph (3)(b).

(3) Infant formula and follow-on formula which does not comply with a specified EU law requirement may continue to be marketed until stocks of such food are exhausted, provided that—

- (a) it was placed on the market or labelled—
  - (i) before 22 February 2020; or
  - (ii) before 22 February 2021 in the case of infant formula and follow-on formula manufactured from protein hydrolysates; and
- (b) the conditions specified in the following provision of the Infant Formula and Follow-on Formula (Wales) Regulations 2007 <sup>M8</sup> are met—

- (i) regulation 3(1) (prohibition on the marketing of infant formula unless certain conditions are met) in the case of infant formula;
- (ii) regulation 3(2) (prohibition on the marketing of follow-on formula unless certain conditions are met) in the case of follow-on formula.

[<sup>F1</sup>(4) Regulations 2 to 4 do not apply in respect of infant formula and follow-on formula manufactured from protein hydrolysates until 22 February 2022.

(5) Schedule 4 makes provision in relation to infant formula and follow-on formula manufactured from protein hydrolysates until 22 February 2022.]

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**Textual Amendments**

**F1** Reg. 5(4)(5) inserted (16.9.2021) by [The Infant Formula and Follow-on Formula \(Wales\) \(Amendment\) Regulations 2021 \(S.I. 2021/955\)](#), regs. 1(2), **2(2)**

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**Commencement Information**

**I5** Reg. 5 in force at 22.2.2020 for specified purposes and at 22.2.2021 in so far as not already in force, see [reg. 1\(2\)](#)

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**Marginal Citations**

**M8** [S.I. 2007/3573](#) (W. 316). The relevant amending instrument is [S.I. 2008/2602](#) (W. 228).

*Vaughan Gething*  
Minister for Health and Social Services, one of  
the Welsh Ministers

**Changes to legislation:**

There are currently no known outstanding effects for the The Infant Formula and Follow-on Formula (Wales) Regulations 2020.