SCOTTISH STATUTORY INSTRUMENTS

2003 No. 578

FOOD

The Food Labelling Amendment (Scotland) Regulations 2003

Made - - - - *27th November 2003*

Laid before the Scottish Parliament *27th November 2003*

Coming into force in accordance with regulation 1(2)

The Scottish Ministers, in exercise of the powers conferred by sections 16(1)(e) and (f), 17(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990(**a**), and of all other powers enabling them in that behalf, having had regard in accordance with section 48(4A)(**b**) of that Act to relevant advice given by the Food Standards Agency and after consultation in accordance with section 48(4) and (4B)(**c**) of that Act, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Food Labelling Amendment (Scotland) Regulations 2003.

(2) Regulations 1 to 4 shall come into force on 18th December 2003 and regulations 5 to 7 shall come into force on 1st July 2004.

(3) These Regulations shall extend to Scotland only.

Amendment of the Food Labelling Regulations 1996

2. The Food Labelling Regulations 1996(**d**) shall be amended in accordance with regulations 3 to 7.

3. In regulation 2(1) (interpretation)–

(a) in the definition of "Directive 94/54", for "Directive 79/112" substitute "Directive 2000/13"; and

(b) after the definition of "Directive 99/2" insert–

> ""Directive 2000/13" means Directive 2000/13/EC of the European Parliament and of the Council(**e**) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs as corrected by a corrigendum published on 25th May 2000(**f**), as amended by Commission Directive 2001/101/EC(**g**),

(**a**) 1990 c.16; sections 16(1) and 48(1) were amended by the Food Standards Act 1999 (c.28) ("the 1999 Act") Act, Schedule 5, paragraph 8; section 17(1) was amended by the 1999 Act, Schedule 5, paragraph 8 and 12; section 26(3) was amended by the 1999 Act, Schedule 6; amendments made by Schedule 5 of the 1999 Act shall 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 were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.
(**b**) Section 48(4A) was inserted by the 1999 Act, Schedule 5, paragraph 21.
(**c**) Section 48(4B) was inserted by the 1999 Act, Schedule 5, paragraph 21.
(**d**) S.I. 1996/1499.
(**e**) O.J. No. L 109, 6.5.00, p.29.
(**f**) O.J. No. L 124, 25.5.00, p.66.
(**g**) O.J. No. L 310, 28.11.01, p.19.

which was itself amended by Commission Directive 2002/86/EC(**a**), and as read with Commission Directive 1999/10/EC(**b**) providing for derogations from the provisions of Article 7 of Directive 2000/13 and Commission Directive 2002/67/EC(**c**) on the labelling of foodstuffs containing quinine, and of foodstuffs containing caffeine;".

4.—(1) In each of the provisions specified in paragraph (2) below for "Directive 79/112", wherever it occurs, substitute "Directive 2002/13".

(2) The specified provisions are regulations 3(1)(i) (exemptions), 19(2)(a)(i) (indication of quantities of certain ingredients or categories of ingredients) and 47(b) (defence in relation to exports).

5. In regulation 14 (names of ingredients)–

(a) in paragraph (5) insert at the beginning "Subject to paragraph (5A) of this regulation,";

(b) after paragraph (5) insert–

"(5A) In the case of quinine or caffeine added to or used in a food as a flavouring, quinine or caffeine (as appropriate) shall be identified by name immediately after the word "flavouring" or "flavourings".".

6. After regulation 34 (foods containing sweeteners, added sugar and sweeteners, aspartame or polyols) insert–

"**Drinks with high caffeine content**

34A.—(1) Subject to paragraph (2), in the case of a drink which–

(a) is intended for consumption without modification and contains caffeine from whatever source, in a proportion in excess of 150 milligrams per litre; or

(b) is in concentrated or dried form and is intended for consumption after reconstitution and contains caffeine, from whatever source, in a proportion in excess of 150 milligrams per litre,

that drink shall be marked or labelled with the words "High caffeine content" in the same field of vision as the name of the food, and those words shall be followed by a reference in brackets to the caffeine content expressed in milligrams per 100 millilitres.

(2) Paragraph (1) of this regulation shall not apply to any drink based on coffee, tea or coffee or tea extract where the name of the food includes the term "coffee" or "tea".".

7. In regulation 50 (transitional provision) insert at the end–

"(11) In any proceedings for an offence under regulation 44(1)(a), it shall be a defence to prove that–

(a) the food concerned was marked or labelled before 1st July 2004; and

(**a**) O.J. No. L 305, 7.11.02, p.19.
(**b**) O.J. No. L 69, 16.3.99, p.22.
(**c**) O.J. No. L 191, 19.7.02, p.20.

(b) the matters constituting the offence would not have constituted an offence under these Regulations if the amendments made by regulations 5 and 6 of the Food Labelling Amendment (Scotland) Regulations 2003 had not been in force when the food was sold.".

TOM McCABE
Authorised to sign by the Scottish Executive

St Andrew's House,
Edinburgh
27th November 2003

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, amend the Food Labelling Regulations 1996 ("the 1996 Regulations") as amended.

These Regulations implement Commission Directive 2002/67/EC on the labelling of foodstuffs containing quinine, and of foodstuffs containing caffeine. Directive 2002/67/EC has to be read with Directive 2000/13/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs.

These Regulations–

(a) update, with effect from 18th December 2003, references in the 1996 Regulations to Council Directive 79/112/EEC which was consolidated by Council Directive 2000/13/EC, as amended (regulations 3 and 4);

(b) introduce a requirement that quinine and caffeine added to or used in food as a flavouring be identified by name in the list of ingredients (regulation 5);

(c) introduce a requirement that drinks containing a high level of caffeine (above 150mg per litre) be marked as such and with a declaration of the caffeine content (in mg per 100 mls), except where "coffee" or "tea" is part of the name of the food (regulation 6);

(d) provide a transitional period for these labelling requirements (regulation 7).

A Regulatory Impact Assessment, which includes a compliance cost assessment that these Regulations would have on business costs, has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Labelling and Standards Division of the Food Standards Agency, 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.

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