1989 No. 809 (S.83)

FOOD

LABELLING, DESCRIPTIONS, ETC

The Food Labelling (Scotland) Amendment Regulations 1989

Made - - - -	*5th May 1989*
Laid before Parliament	*18th May 1989*
Coming into force for the purposes of regulations 1, 2, 4, 5, 6, 11, 12 and 14(1) and (2)	*8th June 1989*
for all other purposes	*17th July 1989*

The Secretary of State, in exercise of the powers conferred upon him by sections 4, 7, 56 and 56A of the Food and Drugs (Scotland) Act 1956(**a**) and of all other powers enabling him in that behalf, and after consultation in accordance with section 56(6) of the said Act with such organisations as appear to him to be representative of interests substantially affected by these Regulations, hereby makes the following Regulations:

Title, commencement and interpretation

1.—(1) These Regulations may be cited as the Food Labelling (Scotland) Amendment Regulations 1989 and shall come into force–

(a) for the purposes of regulations 1, 2, 4, 5, 6, 11, 12 and 14(1) and (2) on 8th June 1989; and

(b) for all other purposes on 17th July 1989.

(2) In these Regulations "the principal Regulations" means the Food Labelling (Scotland) Regulations 1984(**b**).

Amendment of the principal Regulations

2. The principal Regulations shall be amended in accordance with regulations 3 to 13 of these Regulations.

3. The definition of "alcoholic strength by mass" shall be omitted from regulation 2(1).

4. In regulation 2(1)–

(a) after the definition of "chocolate product" there shall be inserted the following definition:–

(**a**) 1956 c.30; section 4(1) was amended by the European Communities Act 1972 (c.68), Schedule 4, paragraph 3(1); section 7 and section 56 were amended by the Weights and Measures Act 1963 (c.31), Schedule 9, Parts I and II; section 56 was also amended by the Criminal Justice Act 1982 (c.48), Schedule 15, paragraph 8 and by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c.73), section 41 and is to be read with section 289GA(2) of the Criminal Procedure (Scotland) Act 1975 (c.21) (inserted by section 66 of the Criminal Justice (Scotland) Act 1987 (c.41)); section 56A was added by the European Communities Act 1972, Schedule 4, paragraph 3(2).

(**b**) S.I. 1984/1519; the relevant amending instrument is S.I. 1985/71.

" 'Community controlled wine' means wine, grape must, sparkling wine, aerated sparkling wine, liqueur wine, semi-sparkling wine and aerated semi-sparkling wine;";

(b) after the definition of "food" there shall be inserted the following definition:–

" 'grape must' has the meaning assigned to it by Annex I to Council Regulation (EEC) No. 822/87(**a**) on the common organisation of the market in wine;";

(c) for the definition of "liqueur wine" there shall be substituted the following definition:–

" 'liqueur wine'–

(a) in relation to a drink produced in the European Economic Community, has the meaning assigned to it by Annex I to Council Regulation (EEC) No. 822/87; and

(b) in relation to a drink originating in a third country or countries, has the meaning assigned to it by article 2 of Council Regulation (EEC) No. 339/79(**b**);";

(d) for the definition of "sparkling wine" there shall be substituted the following definitions:–

" 'sparkling wine', 'aerated sparkling wine', 'semi-sparkling wine' and 'aerated semi-sparkling wine'–

(a) in relation to drinks produced in the European Economic Community, have the meanings respectively assigned to them by Annex I to Council Regulation (EEC) No. 822/87; and

(b) in relation to drinks produced elsewhere, have the meanings respectively assigned to them by article 2 of Council Regulation (EEC) No. 339/79;";

(e) for the definition of "wine" there shall be substituted the following definition:–

" 'wine' has the meaning assigned to it by Annex I to Council Regulation (EEC) No. 822/87.".

5. For regulation 5(2)(f) there shall be substituted the following sub-paragraph:–

"(f) wines or grape musts, in so far as their labelling is regulated by Council Regulation (EEC) No. 355/79(**c**) laying down general rules for the description and presentation of wines and grape musts, and sparkling wines and aerated sparkling wines, in so far as their labelling is regulated by Council Regulation (EEC) No. 3309/85(**d**) laying down general rules for the description and presentation of sparkling wines and aerated sparkling wines;".

6. In regulation 22(b) for the words "sparkling wine", there shall be substituted the words "semi-sparkling wine, aerated semi-sparkling wine,".

7. For regulation 31 there shall be substituted the following two regulations:–

"Prepacked alcoholic drinks other than Community controlled wine

31.—(1) In the case of prepacked alcoholic drinks other than Community controlled wine, every drink with an alcoholic strength by volume of more than 1.2 per cent shall be marked or labelled with an indication of its alcoholic strength by volume in the form of a figure (which may be preceded by the word 'alcohol' or by the abbreviation 'alc.') to not more than one decimal place immediately before the symbol '% vol.'.

(2) Positive and negative tolerances shall be permitted in respect of the indication of alcoholic strength by volume and shall be those specified in Part I of Schedule 5A, which shall be read with the note thereto, expressed in absolute values.

(**a**) O.J. No. L84, 27.3.87, p.1.

(**b**) O.J. No. L54, 5.3.79, p.57; the amending instrument is Council Regulation (EEC) No. 3083/82 (O.J. No. L326, 23.11.82, p.4).

(**c**) O.J. No. L54, 5.3.79, p.99; the relevant amending instruments are the Act of Accession of the Hellenic Republic (O.J. No. L291, 19.11.79, p.17) and Council Regulation (EEC) Nos. 461/80 (O.J. No. L57, 29.2.80, p.36), 1061/81 (O.J. No. L103, 15.4.81, p.7), 3685/81 (O.J. No. L369, 24.12.81, p.1), 2056/84 (O.J. No. L191, 19.7.84, p.3), 3490/84 (O.J. No. L327, 14.12.84, p.2), 1898/85 (O.J. No. L179, 11.7.85, p.1), 3805/85 (O.J. No. L367, 31.12.85, p.39), 1625/86 (O.J. No. L144, 29.5.86, p.1), 537/87 (O.J. No. L55, 25.2.87, p.3), 3485/87 (O.J. No. L330, 21.11.87, p.1).

(**d**) O.J. No. L320, 29.11.85, p.9; the relevant amending instruments are Council Regulations (EEC) Nos. 3805/85 (O.J. No. L367, 31.12.85, p.39); 1626/86 (O.J. No. L144, 29.5.86, p.3); 538/87 (O.J. No. L55, 25.2.87, p.4).

(3) For the purposes of this regulation, the alcoholic strength of any drink shall be determined at 20°C.

(4) Any whisky which has an alcoholic strength by volume of less than 40 per cent and any brandy, gin, rum or vodka which has an alcoholic strength by volume of less than 37.2 per cent shall be marked or labelled with the words 'under strength'. This requirement does not apply to brandy whose alcoholic strength of volume has fallen to less than 37.2 per cent only through maturing in cask.

Alcoholic drinks sold otherwise than prepacked

31A.—(1) This regulation applies to alcoholic drinks when sold otherwise than prepacked, including Community controlled wine.

(2) Subject to paragraph (4) of this regulation, in respect of drinks to which this regulation applies with an alcoholic strength by volume of more than 1.2 per cent there shall–

(a) in respect of a representative sample (which need not exceed 30) of such drinks other than Community controlled wine, and

(b) in respect of a representative sample (which need not exceed six) of Community controlled wine,

be displayed the alcoholic strength by volume in the form of a figure (which may be preceded by the word 'alcohol' or by the abbreviation 'alc.') to not more than one decimal place immediately before the symbol '% vol.', except that where two or more such figures appear in a single list the said word or abbreviation and the said symbol may be used once only at the head of the list of figures.

(3) Positive and negative tolerances shall be permitted in respect of the indication of alcoholic strength by volume and shall be those specified in Part I of Schedule 5A except that for Community controlled wine they shall be those specified in Part II of that Schedule, each of which shall be read with the respective note thereto, expressed in absolute values.

(4) Paragraph (2) of this regulation shall not apply–

(a) to cocktails or other drinks made up of mixtures of more than one drink; or

(b) to drinks which it is customary to serve in such a way that information in respect of alcoholic strength by volume can readily be seen by the intending purchaser.".

8. In regulation 32(1) and (2) after "regulation 24, 25, 28 or 29" there shall be inserted "or 31A".

9. In regulation 33–

(a) in the heading and in paragraph (1), after "regulation 24, 25, 28 or 29" there shall be inserted "or 31A";

(b) in paragraph (1), after sub-paragraph (b) there shall be added the following sub-paragraph:–

"or

(c) in the case of an alcoholic drink to which regulation 31A applies, on a menu, wine list or notice that is readily discernible by an intending purchaser at the place where he chooses such alcoholic drink, or in the same place as is any information already required and displayed under the Price Marking (Food and Drink on Premises) Order 1979(a).".

10. For regulation 35 there shall be substituted–

"Field of vision

35.—(1) Where a food is required to be marked or labelled with an indication of minimum durability or, in the case of an alcoholic drink, of alcoholic strength by volume, that indication shall appear in the labelling of the food in the same field of vision as the name of the food.

(a) S.I. 1979/361.

(2) Where a food is required by the Weights and Measures Act 1985(a) or by any Order made thereunder to be marked or labelled with an indication of net quantity, that indication shall appear in the labelling of the food in the same field of vision as the name of the food and, if the food is also required to be marked or labelled with an indication of minimum durability or, in the case of an alcoholic drink, with an indication of alcoholic strength by volume, in the same field of vision as the indication of minimum durability or the indication of alcoholic strength by volume.".

11. In regulation 37–

(a) in paragraph (3), after sub-paragraph (c) there shall be added the following sub-paragraph:–

"(d) a reference to protein, polyunsaturated fatty acid or sodium in a statement of the basic nutrient content of a food.";

(b) after paragraph (6) there shall be added the following paragraph:–

"(7) In paragraph 3(d) of this regulation, "a statement of the basic nutrient content" in relation to a food means a statement of the energy value and of the protein, carbohydrate and fat content of that food, whether or not supplemented by further details of that content or by a statement of the sodium or the fibre content of the food.".

12. In regulation 39–

(a) in paragraph (1) for the words "as defined in Annex II to Council Regulation (EEC) No. 337/79" where they occur in two places, there shall be substituted "as defined in Annex I to Council Regulation (EEC) No. 822/87";

(b) in paragraph (5) for the words "as defined in Annex II to Council Regulation (EEC) No. 337/79, as amended" there shall be substituted "as defined in Annex I to Council Regulation (EEC) No. 822/87".

13. After Schedule 5 there shall be inserted Schedule 5A as set out in the Schedule to these Regulations.

Transitional provisions

14.—(1) In any proceedings in respect of an act done before 17th July 1989 which is alleged to constitute a contravention of paragraph (1) of regulation 31 of the principal Regulations, the accused shall not be convicted of an offence under the principal Regulations unless the prosecution prove that such an act would have constituted a contravention of regulation 31, as substituted for that regulation by regulation 7 of these Regulations, if it had been in force when the act was done.

(2) Until 17th July 1989, where there is displayed the alcoholic strength of an alcoholic drink specified in regulation 31A(1) of the principal Regulations, as amended by regulation 7 of these Regulations, the tolerances prescribed by regulation 31A(3) shall apply.

(3) In any proceedings in respect of an act which is alleged to constitute a contravention of regulation 31(1) or regulation 31A(2)(a) of the principal Regulations, as amended by regulation 7 of these Regulations, the accused shall not be convicted of an offence under the principal Regulations, as so amended, where that act was done in relation to a drink prepacked before 1st May 1989, which was marked or labelled in accordance with regulation 31 of the principal Regulations before amendment by regulation 7 of these Regulations, or a drink sold otherwise than prepacked and the container from which that drink was dispensed to the ultimate consumer was prepacked before that date.

(4) In any proceedings in respect of an act which is alleged to constitute a contravention of regulation 31A(2)(b) of the principal Regulations, as amended by regulation 7 of these Regulations, the accused shall not be convicted of an offence under the principal Regulations as so amended, where the container from which the wine or grape must, sparkling wine or aerated sparkling wine was dispensed to the ultimate consumer–

(a) was prepacked before 1st May 1988; or

(a) 1985 c.72.

(b) in the case of wines or grape musts in so far as their labelling is regulated by Council Regulation (EEC) No. 355/79, or in the case of sparkling wines or aerated sparkling wines in so far as their labelling is regulated by Council Regulation (EEC) No. 3309/85–

(i) bore a label printed before 1st May 1988 and affixed before 1st May 1989; or

(ii) was directly labelled in manufacture before 1st May 1988 and prepacked before 1st May 1990.

Sanderson of Bowden
Minister of State,
Scottish Office

St. Andrew's House, Edinburgh
5th May 1989

SCHEDULE

Regulation 13

"SCHEDULE 5A

Regulations 31(2) and 31A(3)

PART I

POSITIVE AND NEGATIVE TOLERANCES PERMITTED IN THE INDICATION OF THE ALCOHOLIC STRENGTH BY VOLUME ON ALCOHOLIC DRINKS OTHER THAN COMMUNITY CONTROLLED WINE

Description of alcoholic drink	*Positive or negative tolerance*
1. (a) Beers having an alcoholic strength not exceeding 5.5% volume (b) alcoholic drinks made from grapes and falling within subheading No. 2206-0093 and No. 2206-0099 of the combined nomenclature (1988)	0.5% vol.
2. (a) Beers having an alcoholic strength exceeding 5.5% volume (b) alcoholic drinks made from grapes and falling within subheading No. 2206-0091 of the combined nomenclature (1988) (c) ciders (other than draught ciders), perries, fruit wines and other wines obtained from fruits other than grapes whether or not semi-sparkling or sparkling (d) alcoholic drinks based on fermented honey	1% vol.
3. (a) Alcoholic drinks containing macerated fruit or parts of plants (b) draught cider.	1.5% vol.
4. Any other alcoholic drink	0.3% vol.

NOTE

The above tolerances shall apply without prejudice to the tolerances deriving from the method of analysis used for determining the alcoholic strength.

PART II

POSITIVE AND NEGATIVE TOLERANCES PERMITTED IN THE INDICATION OF ALCOHOLIC STRENGTH BY VOLUME ON COMMUNITY CONTROLLED WINE WHEN SOLD OTHERWISE THAN PREPACKED

Description of alcoholic drink	*Positive or negative tolerance*
1. Wines regulated by Council Regulation (EEC) 355/79 other than quality wines produced in a specified region and stored in bottles for more than 3 years	0.5% vol.
2. Quality wines produced in a specified region and stored in bottles for more than 3 years	0.8% vol.
3. Sparkling wines, aerated sparkling wines, liqueur wines, semi-sparkling wines and aerated semi-sparkling wines	0.8% vol.

NOTE

The above tolerances shall apply without prejudice to the tolerances deriving from the method of analysis used for determining the alcoholic strength."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Scotland only, further amend the Food Labelling (Scotland) Regulations 1984 ("the principal Regulations") in respect of alcoholic strength marking and nutrition labelling. The Regulations continue to implement Council Directive No. 79/112/EEC (O.J. No. L33, 8.2.79, p.1) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs for sale to the ultimate consumer, as now amended by Council Directive 86/197/EEC (O.J. No. L144, 29.5.86, p.38) requiring an indication of the alcoholic strength of alcoholic beverages and supplemented by Commission Directive 87/250/EEC (O.J. No. L113, 30.4.87, p.57).

Regulations 7 and 13 and the Schedule substitute for regulation 31 of the principal Regulations alcoholic strength labelling requirements for prepacked alcoholic drinks other than Community controlled wine. For alcoholic drinks when sold otherwise than prepacked (i.e. dispensed), the alcoholic strengths of a representative sample (which need not exceed 6 in the case of Community controlled wines or 30 in the case of other alcoholic drinks) must be displayed. Cocktails and other mixtures of dispensed drinks are exempted from these requirements. The alcoholic strength must be marked or labelled, or notified, by volume, positive and negative tolerances being permitted for the purpose.

Regulations 8, 9 and 10 make consequential amendments to the manner of marking or labelling requirements of the principal Regulations. In particular they require that dispensed drinks be marked or labelled on a menu, wine list or notice and that the indication of alcoholic strength marking appear in the same field of vision as the name of the alcoholic drink. Where information is already required and displayed under the Price Marking (Food and Drink on Premises) Order 1979 the notification of alcoholic strength required under the principal Regulations may be given in the same place as is the information given under that Order.

Regulation 11 provides that a reference to protein, polyunsaturated fatty acid or sodium in a statement of the basic nutrient content of a food shall not of itself constitute a claim of a type described in Schedule 6 to the principal Regulations.

Further amendments are made by regulations 4 and 12 to update the provisions on wine in accordance with Council Regulation (EEC) No. 822/87 (O.J. No. L84, 27.3.87, p.1) and by regulations 5 and 6 to exempt from labelling requirements sparkling wines and aerated sparkling wines in so far as their labelling is governed by Council Regulation (EEC) No. 3309/85 (O.J. No. L320, 29.11.85, p.9).

The Regulations come into force for the most part on 8th June 1989 and, in the case of the new alcoholic strength labelling requirements, on 17th July 1989. Until the latter date, regulation 14(1) and (2) permits, for prepacked drinks, compliance with the new requirements and, for dispensed drinks, the use of the new tolerances, in alcoholic strength labelling.

For alcoholic drinks (other than Community controlled wine), there is no offence in respect of the failure to mark or label with the alcoholic strength where the drink was prepacked before 1st May 1989 and complies with the former regulation 31 labelling requirements, or where the drink is dispensed from a container prepacked before 1st May 1989 (regulation 14(3)).

For dispensed community controlled wine, there is no offence in respect of the failure to mark or label with the alcoholic strength where the drink was prepacked before 1st May 1988, or where the label on the container from which the wine is dispensed was printed before 1st May 1988 and affixed before 1st May 1989 or where the container was directly labelled in manufacture before 1st May 1988 and prepacked before 1st May 1990 (regulation 14(4)).