This Statutory Instrument has been made in consequence of a defect in S.I. 2023/28 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2023 No. 131

FOOD

The Food Supplements and Food for Specific Groups (Miscellaneous Amendments) (No. 2) Regulations 2023

Made - - - -	*7th February 2023*
Laid before Parliament	*8th February 2023*
Coming into force in accordance with regulation 1(2) to (4)	

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 16(1)(a) and 48(1) of the Food Safety Act 1990(**a**), Articles 11(1)(b) and (g), 16(1)(a) and 16A(2) of Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control(**b**) and regulations 2(2) and 5(3) of the Nutrition (Amendment etc.) (EU Exit) Regulations 2019(**c**).

The Secretary of State has consulted in accordance with Article 9 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 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(**d**).

In accordance with Article 16A of Regulation (EU) No 609/2013 and regulation 5(2) of the Nutrition (Amendment etc.) (EU Exit) Regulations 2019, these Regulations are made with the consent of the Scottish and Welsh Ministers.

The Secretary of State has had regard to relevant advice given by the Food Standards Agency in accordance with section 48(4A) of the Food Safety Act 1990.

(**a**) 1990 c. 16. Sections 16(1) and 48 were amended by section 40(1) of, and paragraphs 7 and 8 of Schedule 5 to, the Food Standards Act 1999 (c. 28). Article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) transferred the functions of a Minister of the Crown under sections 16 and 48, so far as exercisable in relation to Wales, to the National Assembly for Wales. Those functions are now exercisable by the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32). Articles 2 and 6 of, and the Schedule to, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) Order 2005 (S.I. 2005/849) transferred functions under sections 16 and 48 so far as they are exercisable in or as regards Scotland, to the Scottish Ministers. There are other amendments which are not relevant to these Regulations.

(**b**) EUR 2013/609, amended by EUR 2017/1091, S.I. 2019/651 and 2020/1476.

(**c**) S.I. 2019/651, amended by S.I. 2020/1476. The power to make regulations under regulations 2(2) and 5(3) is exercised by the "appropriate authority" as defined in regulation 5(4) and in accordance with regulation 5(2).

(**d**) EUR 2002/178. Article 9 requires open and transparent public consultation, directly or through representative bodies, during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it. There are amendments which are not relevant to these Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Food Supplements and Food for Specific Groups (Miscellaneous Amendments) (No. 2) Regulations 2023.

(2) Subject to paragraphs (3) and (4), these Regulations come into force on 10th February 2023.

(3) This regulation and regulation 2 come into force at 11.59 p.m. on 9th February 2023.

(4) The following come into force on 10th August 2024—

(a) regulation 3(4);

(b) regulation 4(4);

(c) regulation 5(4);

(d) regulation 6(4).

(5) Any amendment made by these Regulations has the same extent as the provision amended.

Amendment to the Food Supplements and Food for Specific Groups (Miscellaneous Amendments) Regulations 2023

2.—(1) The Food Supplements and Food for Specific Groups (Miscellaneous Amendments) Regulations 2023(**a**) are amended as follows.

(2) For regulation 1(2), substitute—

"(2) Subject to paragraph (2A), these Regulations come into force on 10th February 2023.".

(3) After regulation 1(2), insert—

"(2A) Regulation 6(2)(a) comes into force on 10th August 2024.".

Amendment to the Food Supplements (England) Regulations 2003

3.—(1) Regulation 12 (transitional provision) of the Food Supplements (England) Regulations 2003(**b**) is amended as follows.

(2) The existing paragraph is re-numbered as (1).

(3) After the re-numbered paragraph (1), insert—

"(2) In any proceedings for an offence under regulation 9 relating to a breach of regulation 6 or 7 consisting of a contravention of, or a failure to comply with, regulation 6(3)(b), it shall be a defence to prove that—

(a) zinc was used in the manufacture of the food supplement and the food supplement was marked or labelled before 10th February 2023; and

(b) the matters constituting the alleged offence would not have constituted an offence under these Regulations as they had effect immediately before 10th February 2023.".

(4) After paragraph (2), insert—

"(3) In any proceedings for an offence under regulation 9 relating to a breach of regulation 6 or 7 consisting of a contravention of, or a failure to comply with, regulation 6(3)(b), it shall be a defence to prove that—

(a) copper was used in the manufacture of the food supplement and the food supplement was marked or labelled before 10th August 2024; and

(b) the matters constituting the alleged offence would not have constituted an offence under these Regulations as they had effect immediately before 10th August 2024.".

(**a**) S.I. 2023/28.

(**b**) S.I. 2003/1387, amended by S.I. 2009/3251, which inserted regulation 12, 2014/1855 and 2019/651. There are other amendments which are not relevant to these Regulations.

Amendment to the Food Supplements (Scotland) Regulations 2003

4.—(1) Regulation 12 (transitional provision) of the Food Supplements (Scotland) Regulations 2003(**a**) is amended as follows.

(2) The existing paragraph is re-numbered as paragraph (1).

(3) After the re-numbered paragraph (1), insert—

"(2) In any proceedings for an offence under regulation 9 relating to a breach of regulation 6 or 7 consisting of a contravention of, or a failure to comply with, regulation 6(3)(b), it shall be a defence to prove that—

(a) zinc was used in the manufacture of the food supplement and the food supplement was marked or labelled before 10th February 2023; and

(b) the matters constituting the alleged offence would not have constituted an offence under these Regulations as they had effect immediately before 10th February 2023.
".

(4) After paragraph (2), insert—

"(3) In any proceedings for an offence under regulation 9 relating to a breach of regulation 6 or 7 consisting of a contravention of, or a failure to comply with, regulation 6(3)(b), it shall be a defence to prove that—

(a) copper was used in the manufacture of the food supplement and the food supplement was marked or labelled before 10th August 2024; and

(b) the matters constituting the alleged offence would not have constituted an offence under these Regulations as they had effect immediately before 10th August 2024.".

Amendment to the Food Supplements (Wales) Regulations 2003 (English language text)

5.—(1) Regulation 12 (transitional provision) of the English language text of the Food Supplements (Wales) Regulations 2003(**b**) is amended as follows.

(2) The existing paragraph is re-numbered as paragraph (1).

(3) After the re-numbered paragraph (1), insert—

"(2) In any proceedings for an offence under regulation 9 relating to a breach of regulation 6 or 7 consisting of a contravention of, or a failure to comply with, regulation 6(3)(b), it shall be a defence to prove that—

(a) zinc was used in the manufacture of the food supplement and the food supplement was marked or labelled before 10th February 2023; and

(b) the matters constituting the alleged offence would not have constituted an offence under these Regulations as they had effect immediately before 10th February 2023.
".

(4) After paragraph (2), insert—

"(3) In any proceedings for an offence under regulation 9 relating to a breach of regulation 6 or 7 consisting of a contravention of, or a failure to comply with, regulation 6(3)(b), it shall be a defence to prove that—

(a) copper was used in the manufacture of the food supplement and the food supplement was marked or labelled before 10th August 2024; and

(b) the matters constituting the alleged offence would not have constituted an offence under these Regulations as they had effect immediately before 10th August 2024.".

(**a**) S.S.I. 2003/278, amended by S.S.I. 2009/438, which inserted regulation 12, 2014/312 and 2019/54. There are other amendments which are not relevant to these Regulations.

(**b**) S.I. 2003/1719 (W. 186), amended by S.I. 2009/3252 (W. 282), which inserted regulation 12, 2014/2303 (W. 227) and 2019/179 (W. 45). There are other amendments which are not relevant to these Regulations.

Amendment to the Food Supplements (Wales) Regulations 2003 (Welsh language text)

6.—(1) Regulation 12 (darpariaeth drosiannol) of the Welsh language text of the Food Supplements (Wales) Regulations 2003 (Rheoliadau Ychwanegion Bwyd (Cymru) 2003)(**a**) is amended as follows.

(2) The existing paragraph is re-numbered as paragraph (1).

(3) After the re-numbered paragraph (1), insert—

"(2) Mewn unrhyw achosion am dramgwydd o dan reoliad 9 sy'n ymwneud â thorri rheoliad 6 neu 7 drwy fynd yn groes i reoliad 6(3)(b) neu fethu â chydymffurfio ag ef, bydd profi'r canlynol yn amddiffyniad—

(a) bod zinc wedi'i ddefnyddio wrth weithgynhyrchu'r ychwanegyn bwyd a bod yr ychwanegyn bwyd wedi'i farcio neu wedi'i labelu cyn 10 Chwefror 2023; a

(b) na fyddai'r materion sy'n dramgwydd honedig wedi bod yn dramgwydd o dan y Rheoliadau hynny fel yr oeddent yn cael effaith yn union cyn 10 Chwefror 2023.".

(4) After paragraph (2), insert—

"(3) Mewn unrhyw achosion am dramgwydd o dan reoliad 9 sy'n ymwneud â thorri rheoliad 6 neu 7 drwy fynd yn groes i reoliad 6(3)(b) neu fethu â chydymffurfio ag ef, bydd profi'r canlynol yn amddiffyniad—

(a) bod copr wedi'i ddefnyddio wrth weithgynhyrchu'r ychwanegyn bwyd a bod yr ychwanegyn bwyd wedi'i farcio neu wedi'i labelu cyn 10 Awst 2024; a

(b) na fyddai'r materion sy'n dramgwydd honedig wedi bod yn dramgwydd o dan y Rheoliadau hynny fel yr oeddent yn cael effaith yn union cyn 10 Awst 2024.".

Signed by authority of the Secretary of State for Health and Social Care

Neil O'Brien
Parliamentary Under Secretary of State,
Department of Health and Social Care

7th February 2023

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Food Supplements and Food for Specific Groups (Miscellaneous Amendments) Regulations 2023 ("the 2023 Regulations") (S.I. 2023/28), the Food Supplements (England) Regulations 2003 (S.I. 2003/1387), the Food Supplements (Scotland) Regulations 2003 (S.I. 2003/278) and the Food Supplements (Wales) Regulations 2003 (S.I. 2003/1719) ("the 2003 GB Food Supplements Regulations").

Regulation 2 amends regulation 1 of the 2023 Regulations to correct a drafting defect in the commencement provision.

Regulations 3, 4, 5 and 6 insert transitional provisions into the respective 2003 GB Food Supplements Regulations to provide a defence against relevant enforcement proceedings in respect of the sale of food supplements which used copper and zinc in the manufacturing process and were marked or labelled prior to the coming into force of the respective amendments made by regulation 6(2) of the 2023 Regulations. Regulation 5 inserts the transitional provision into the English language text of the Food Supplements (Wales) Regulations 2003 and regulation 6 inserts the provision into the Welsh language text.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

(**a**) O.S. 2003/1719 (Cy. 186), a ddiwygiwyd gan O.S. 2009/3252 (Cy. 282), a fewnosododd reoliad 12, 2014/2303 (Cy. 227) a 2019/179 (Cy. 45). Ceir diwygiadau eraill nad ydynt yn berthnasol i'r Rheoliadau hyn.

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