

**2005 No. 464**

**FOOD, ENGLAND**

**The Smoke Flavourings (England) Regulations 2005**

*Made* - - - - *2nd March 2005*

*Laid before Parliament* *9th March 2005*

*Coming into force in accordance with regulation 1st April  
2005*

The Secretary of State, in exercise of the powers conferred on him by sections 16(1)(a), (c), (e) and (f), 17(2), 26(1) and (3) and 48(1) of, and paragraph 1 of Schedule 1 to, the Food Safety Act 1990(a) and now vested in him(b), and having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency, and after consultation 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(c) makes the following Regulations:

**Title, commencement and application**

**1. These Regulations —**

- (a) may be cited as the Smoke Flavourings (England) Regulations 2005;
- (b) shall come into force —
  - (i) in the case of regulation 3 and regulations 1 and 2 insofar as they relate to regulation 3, on 1st April 2005;
  - (ii) otherwise, on 16th June 2005;
- (c) shall apply in relation to England only.

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(a) 1990 c. 16

(b) 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 paragraphs 7 and 8 of Schedule 5 to the Food Standards Act 1999 (1999 c. 28), and paragraphs 12 and 21 of that Schedule amend respectively sections 17(1) and 48 of the 1990 Act. Section 48 was also amended by S.I. No. 2004/2990. Functions of “the Ministers” so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), as read with section 40(3) of the 1999 Act, and 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.

(c) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4). By virtue of regulation 5 of the Food Safety Act 1990 (Amendment) Regulations 2004 (S.I. No. 2004/2290), with effect from 7th December 2004 the consultation requirement contained in section 48(4) of the 1990 Act is disapplied in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002.

## **Interpretation**

2.—(1) In these Regulations —

“the Act” means the Food Safety Act 1990;

“food authority” does not include —

- (a) the council of a district of a non-metropolitan county, except where the county functions have been transferred to that council pursuant to a structural change, or
- (b) the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner and Middle Temple);

“Regulation 2065/2003” means Regulation (EC) No. 2065/2003 of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods<sup>(a)</sup>;

“specified Community provision” means a provision of Regulation 2065/2003 specified in column 1 and described in column 2 of the Schedule to these Regulations.

(2) Other expressions used in these Regulations and in Regulation 2065/2003 have the same meanings in these Regulations as in Regulation 2065/2003 and in these Regulations any reference to a numbered article or annex is a reference to the article or annex so numbered in Regulation 2065/2003.

## **Administration of Regulation 2065/2003**

3. The national competent authority for the purposes of Article 7 of Regulation 2065/2003 (application for authorisation) shall be the Food Standards Agency<sup>(b)</sup>.

## **Condemnation of food**

4.—(1) Where, in relation to any food, a contravention of any of Articles 4.2, 5.1, 5.2, 9.4, or 9.5 has occurred—

- (a) that food shall be treated for the purposes of section 9 of the Act as failing to comply with the food safety requirements; and
- (b) if that food is part of a batch, lot or consignment of food of the same class or description, it shall be presumed, until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

(2) For the purposes of this regulation “food” includes any primary smoke condensate, primary tar fraction or derived smoke flavouring.

## **Offences and penalties**

5. Any person who contravenes or fails to comply with any of the specified Community provisions contained in the Schedule to these Regulations shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **Application of various provisions of the Food Safety Act 1990**

6. The following provisions of the Act shall apply for the purposes of these Regulations and Regulation 2065/2003 as they apply for the purposes of the Act —

- (a) section 3 (presumption that food is intended for human consumption);
- (b) section 20 (offences due to the fault of another person);
- (c) section 21 (defence of due diligence) as it applies for the purposes of sections 14 or 15 of that Act);
- (d) section 22 (defence of publication in the course of business);

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(a) OJ No. L309, 26.11.2003, p.1.

(b) Whose address in England is Aviation House, 125 Kingsway, London WC2B 6NH.

- (e) section 30(8) (which relates to documentary evidence);
- (f) section 33(1) (obstruction, etc. of officers);
- (g) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection 1(b) above” shall be deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (f);
- (h) section 35(1) (punishment of offences)(a) insofar as it relates to offences under section 33(1) as applied by sub-paragraph (f);
- (i) section 35(2) and (3) insofar as it relates to offences under section 33(2) as applied by sub-paragraph (g);
- (j) section 36 (offences by bodies corporate); and
- (k) section 44 (protection of officers acting in good faith).

**Enforcement**

7. Each food authority shall enforce and execute these Regulations within their area.

Signed by authority of the Secretary of State for Health

2nd March 2005

*Melanie Johnson*  
Parliamentary Under Secretary of State,  
Department of Health

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(a) Section 35(1) is amended by s. 280(2) and Schedule 26 of the Criminal Justice Act 2003 from a date to be appointed.

## SCHEDULE

Regulations 2 and 5

### SPECIFIED COMMUNITY PROVISIONS

<i>Provision of Regulation 2065/2003</i>	<i>Subject Matter</i>
Article 4.2	<p>Prohibition on marketing a smoke flavouring not on the list of authorised smoke flavourings, or any food in or on which such a smoke flavouring is present.</p> <p>Prohibition on marketing an authorised smoke flavouring, or any food in or on which such a smoke flavouring is present, otherwise than in accordance with any conditions of use laid down in the authorisation.</p>
Article 5.1	<p>Prohibition on using treated wood, unless it can be demonstrated by appropriate certification or documentation that the substance used in treatment does not give rise to potentially toxic substances during combustion.</p> <p>Requirement to be able to demonstrate by documentation or certification that the prohibition described above has been observed.</p>
Article 5.2	<p>Requirement to observe conditions in Annex I during production of primary products.</p> <p>Prohibition on the use of water-insoluble oily phase during production of smoke flavourings.</p>
Article 9.4	<p>Requirement that an authorisation holder or any other food business operator using an authorised product, or a derived smoke flavouring produced from an authorised product, shall comply with any conditions or restrictions attached to the authorisation.</p>
Article 9.5	<p>Requirement that an authorisation holder inform the Commission of any new scientific or technical information relating to an authorised product, which might influence the assessment of the safety of that authorised product.</p>
Article 13.1	<p>Requirement that food business operators ensure that the information specified is transmitted to the receiving food business operator when the product is first placed on the market.</p>
Article 13.2	<p>Requirement that following first placing on the market, on each occasion that the product is placed on the market, food business operators placing the products on the market transmit the information specified in Article 13.1 to the receiving food business operators.</p>
Article 13.3	<p>Requirement that food business operators have systems and procedures in place to identify from whom they received and to whom they passed on the product.</p>

## EXPLANATORY NOTE

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

1. These Regulations, which apply to England, provide for the enforcement and execution of certain specified provisions of Regulation (EC) No. 2065/2003 of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods (OJ No. L309, 26.11.2003, p.1).

2. In particular these Regulations—

- (a) formally designate the Food Standards Agency as the national competent authority to receive applications for the authorisation of new primary smoke condensates and primary tar fractions for use as such in or on foods, or in the production of derived smoke flavourings for use in or on foods. (*regulation 3*);
- (b) apply various provisions of the Food Safety Act 1990 with some modifications in their application for the purposes of these Regulations (*regulations 4 and 6*);
- (c) establish penalties for failing to comply with certain specified provisions of Regulation (EC) No. 2065/2003 (*regulation 5 and the Schedule*);
- (d) provide for certain food authorities to enforce the provisions of these Regulations and Regulation (EC) No. 2065/2003 (*regulation 7*).

3. A Regulatory Impact Assessment has been prepared and placed in the Library of each House of Parliament. Copies may be obtained from the Novel Foods, Additives and Supplements Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.





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STATUTORY INSTRUMENTS

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