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STATUTORY INSTRUMENTS

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**2007 No. 2266**

**FOOD, ENGLAND**

**The Food (Suspension of the Use of E 128 Red  
2G as Food Colour) (England) Regulations 2007**

<i>Made</i>	- - - -	<i>30th July 2007</i>
<i>Laid before Parliament</i>		<i>1st August 2007</i>
<i>Coming into force</i>	- -	<i>2nd August 2007</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred on him by section 2(2) of the European Communities Act 1972 <sup>(1)</sup> as read with paragraph 1A of Schedule 2 to that Act.

The Secretary of State has been designated for the purpose of section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink) including the primary production of food <sup>(2)</sup>.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for any reference to [Commission Regulation \(EC\) No. 884/2007](#) on emergency measures suspending the use of E 128 Red 2G as food colour<sup>(3)</sup> to be construed as a reference to that Regulation as amended from time to time.

**Title, application and commencement**

**1.** These Regulations may be cited as the Food (Suspension of the Use of E 128 Red 2G as Food Colour) (England) Regulations 2007, apply in relation to England only and come into force on 2nd August 2007.

**Interpretation**

**2.—**(1) In these Regulations—

“authorised officer”, in relation to a food authority, means any person (whether or not an officer of the authority) who is authorised by it in writing, either generally or specially, to act in matters arising under these Regulations;

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(1) [1972 c. 68](#). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 ([2006 c.51](#)).

(2) [SI 2003/2901](#).

(3) OJ No. L195, 27.7.2007, p.8.

“the Commission Regulation” means [Commission Regulation \(EC\) No. 884/2007](#) on emergency measures suspending the use of E 128 Red 2G as food colour;

“food authority” has the meaning that it bears by virtue of section 5(1) of the Food Safety Act 1990<sup>(4)</sup> except that it does not include the appropriate Treasurer referred to in section 5(1)(c) of that Act (which deals with the Inner and Middle Temple).

(2) Where any functions under the Food Safety Act 1990 are assigned—

- (a) by an order under section 2 or 7 of the Public Health (Control of Disease) Act 1984<sup>(5)</sup>, to a port health authority;
- (b) by an order under section 6 of the Public Health Act 1936<sup>(6)</sup>, to a joint board for a united district; or
- (c) by an order under paragraph 15(6) of Schedule 8 to the Local Government Act 1985<sup>(7)</sup>, to a single authority for a metropolitan county,

any reference in these Regulations to a food authority shall be construed, so far as relating to those functions, as a reference to the authority to whom they are so assigned.

(3) In these Regulations any reference to the Commission Regulation is a reference to the Commission Regulation as amended from time to time.

### **Suspension of activities involving the colour E128 Red 2G**

3.—(1) Notwithstanding the provisions of the Colours in Food Regulations 1995<sup>(8)</sup>, any person who contravenes or fails to comply with the following provisions of the Commission Regulation shall be guilty of an offence—

- (a) Article 1(1) (suspending the use of the colour E 128 Red 2G in food);
- (b) Article 1(2) (suspending the placing on the market of food containing the colour E 128 Red 2G); or
- (c) Article 1(3) (suspending the import of food containing the colour E 128 Red 2G).

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale, to imprisonment for a term not exceeding three months or to both.

### **Enforcement**

4. It shall be the duty of each food authority to execute and enforce these Regulations within its area.

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

5. The following provisions of the Food Safety Act 1990 shall apply for the purposes of these Regulations with the modification that any reference in those provisions to that Act or Part thereof shall be construed as a reference to these Regulations —

- (a) section 20 (offences due to fault of another person);
- (b) section 21 (defence of due diligence)<sup>(9)</sup>, with the modifications that subsections (2) to (4) shall apply in relation to an offence under regulation 3(1)(b) as they apply in relation to

(4) [1990 c.16](#).

(5) [1984 c.22](#); section 7(3)(d) was substituted by paragraph 27 of Schedule 3 to the Food Safety Act 1990.

(6) [1936 c.49](#); section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.

(7) [1985 c.51](#); paragraph 15(6) was amended by paragraph 31(b) of Schedule 3 to the Food Safety Act 1990.

(8) [S.I. 1995/3124](#), to which there are amendments not relevant to these Regulations.

(9) Section 21 was amended by [S.I. 2004/3279](#).

an offence under section 14 or 15 and that in subsection (4)(b) the references to “sale or intended sale” shall be deemed to be references to “placing on the market”;

- (c) section 32 (powers of entry);
- (d) section 33(1) (obstruction etc. of officers);
- (e) 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 section 33(1)(b) as applied by sub-paragraph (d);
- (f) section 35(1) (punishment of offences)(**10**), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (d);
- (g) section 35(2) and (3)(**11**), in so far as it relates to offences under section 33(2) as applied by sub-paragraph (e);
- (h) section 36 (offences by bodies corporate);
- (i) section 36A (offences by Scottish partnerships)(**12**); and
- (j) section 44 (protection of officers acting in good faith).

Signed by authority of the Secretary of State for Health.

30th July 2007

*Dawn Primarolo*  
Minister of State,  
Department of Health

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(10) Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c. 44), Schedule 26, paragraph 42, from a date to be appointed.

(11) Section 35(3) was amended by S.I. 2004/3279.

(12) Section 36A was inserted by the Food Standards Act 1999 (1999 c. 28), Schedule 5, paragraph 16.

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## EXPLANATORY NOTE

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

1. These Regulations provide for the execution and enforcement in relation to England of [Commission Regulation \(EC\) No. 884/2007](#) on emergency measures suspending the use of E 128 Red 2G as food colour (OJ No. L195, 27.7.2007, p.8).

2. By virtue of European Parliament and Council Directive [94/36/EC](#) (OJ No. L237, 10.9.1994, p.13, as amended by Regulation [\(EC\) No. 1882/2003](#) of the European Parliament and of the Council, OJ No. L284, 31.10.2003, p.1), the colour E 128 Red 2G is legally authorised for use in all member States. That Directive has been implemented by the Colours in Food Regulations 1995 ([S.I. 1995/3124](#), as amended). However, [Commission Regulation \(EC\) No. 884/2007](#) suspends with immediate effect the use of the colour E 128 Red 2G in food and the placing on the market and the import of food containing the colour E 128 Red 2G.

3. These Regulations—

- (a) provide that a person who contravenes or fails to comply with certain provisions of [Commission Regulation \(EC\) No. 884/2007](#) (relating to suspending the use of the colour E 128 Red 2G in food; suspending the placing on the market of food containing the colour E 128 Red 2G; and suspending the import of food containing the colour E 128 Red 2G) is guilty of an offence (*regulation 3(1)*);
- (b) provide penalties for offences under regulation 3(1) (*regulation 3(2)*);
- (c) provide for their execution and enforcement (*regulation 4*); and
- (d) apply with modifications certain provisions of the Food Safety Act 1990 ([1990 c. 16](#)) for the purposes of the Regulations (*regulation 5*).

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Novel Foods, Additives and Supplements Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.