

2009 No. 2538

FOOD, ENGLAND

**The Food Labelling (Nutrition Information) (England)
Regulations 2009**

<i>Made</i>	- - - -	<i>21st September 2009</i>
<i>Laid before Parliament</i>		<i>25th September 2009</i>
<i>Coming into force</i>	- -	<i>30th October 2009</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 16(1)(e), 17(1) and 48(1) of the Food Safety Act 1990(a), and now vested in him(b).

In accordance with section 48(4A) of that Act, he has had regard to relevant advice given by the Food Standards Agency.

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), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title, application and commencement

1. These Regulations may be cited as the Food Labelling (Nutrition Information) (England) Regulations 2009, apply in relation to England only and come into force on 30th October 2009.

(a) 1990 c. 16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c.28), (“the 1999Act”). Section 48 was also amended by S.I. 2004/2990. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c.40), Schedule 6 to the 1999 Act and S.I. 2004/2990.

(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 paragraph 8 of Schedule 5 to the 1999 Act. 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 thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32). 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 Commission Regulation (EC) No. 202/2008 (OJ No. L60, 5.3.2008, p.17).

Amendment of the Food Labelling Regulations 1996

2.—(1) The Food Labelling Regulations 1996(a) are amended in accordance with paragraphs (2) to (4) and regulation 3.

(2) In regulation 2(1) (interpretation)—

(a) in the definition of Directive 90/496 after the words “Commission Directive 2003/120/EC” insert “and Commission Directive 2008/100/EC”; and

(b) after the definition of “fat” insert the following—

““fibre”, in the context of nutrition labelling, means carbohydrate polymers with three or more monomeric units, which are neither digested nor absorbed in the human small intestine and belong to the following categories:

– edible carbohydrate polymers naturally occurring in the food as consumed;

– edible carbohydrate polymers which have been obtained from food raw material by physical, enzymatic or chemical means and which have a beneficial physiological effect demonstrated by generally accepted scientific evidence; or

– edible synthetic carbohydrate polymers which have a beneficial physiological effect demonstrated by generally accepted scientific evidence;”.

(3) In Schedule 6, Part II —

(a) as Table A (vitamins in respect of which claims may be made) substitute the table of entries set out in Schedule 1 to these Regulations; and

(b) as Table B (minerals in respect of which claims may be made) substitute the table of entries set out in Schedule 2 to these Regulations.

(4) In Schedule 7, Part I, paragraph 5 —

(a) at the end of sub-paragraph (g) for the full stop substitute a semi-colon; and

(b) after sub-paragraph (g) add the following sub-paragraphs —

“(h) 1 gram of fibre shall be deemed to contribute 8 kJ (2 kcal);

(i) 1 gram of erythritol shall be deemed to contribute 0 kJ (0 kcal).”

Transitional provision

3. In regulation 50 (transitional provision), after paragraph (15) add the following as paragraph (16) —

“(16) In any proceedings for an offence under regulation 44(1)(b) it shall be a defence to prove that —

(a) the food concerned —

(i) if sold, was sold before the 31st October 2012, and

(ii) if advertised for sale, was advertised for sale before 31st October 2012 but not on or after that date; and

(b) the matters constituting the alleged offence would not have constituted an offence under these Regulations if the amendments made by regulation 2 of the Food Labelling (Nutrition Information) (England) Regulations 2009(b) had not been in operation when the food was sold or advertised, as the case may be.”

Signed by authority of the Secretary of State for Health.

21st September 2009

Gillian Merron
Minister of State,
Department of Health

(a) S.I. 1996/1499, as last amended by S.I. 2008/1317. The definition of Directive 90/496 and paragraph 5 of Part 1 of Schedule 7 were both previously amended in relation to England by S.I. 2004/1512.

(b) S.I. 2009/2538

SCHEDULE 1

Regulation 2(3)(a)

Table of entries to be substituted as Table A (vitamins in respect of which claims may be made) in Schedule 6, Part II, to the Food Labelling Regulations 1996

<i>Column 1</i> <i>Vitamin</i>	<i>Column 2</i> <i>Recommended Daily Allowance</i>
Vitamin A	800 µg
Vitamin D	5 µg
Vitamin E	12 mg
Vitamin K	75 µg
Vitamin C	80 mg
Thiamin	1.1 mg
Riboflavin	1.4 mg
Niacin	16 mg
Vitamin B6	1.4 mg
Folic acid	200 µg
Vitamin B12	2.5 µg
Biotin	50 µg
Pantothenic acid	6 mg

SCHEDULE 2

Regulation 2(3)(b)

Table of entries to be substituted as Table B (minerals in respect of which claims may be made) in Schedule 6, Part II, to the Food Labelling Regulations 1996

<i>Column 1</i> <i>Mineral</i>	<i>Column 2</i> <i>Recommended Daily Allowance</i>
Potassium	2000 mg
Chloride	800 mg
Calcium	800 mg
Phosphorus	700 mg
Magnesium	375 mg
Iron	14 mg
Zinc	10 mg
Copper	1 mg
Manganese	2 mg
Fluoride	3.5 mg
Selenium	55 µg
Chromium	40 µg
Molybdenum	50 µg
Iodine	150 µg

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations further amend the Food Labelling Regulations 1996 (“the principal Regulations”) in so far as they apply in relation to England. The principal Regulations extend to the whole of Great Britain.

2. These Regulations implement in England Commission Directive 2008/100/EC amending Council Directive 90/496/EEC on nutrition labelling for foodstuffs as regards recommended daily allowances, energy conversion factors and definitions (OJ No. L285, 29.10.2008, p.9) (“the Commission Directive”).

3. The Regulations implement the Commission Directive by amending the principal Regulations so as to —

- (a) include a definition of “fibre” (*regulation 2(2)*);
- (b) amend the lists of vitamins and minerals in respect of which nutrition claims may be made, both as regards the substances included and the recommended daily allowances (*regulation 2(3) and Schedules 1&2*);
- (c) provide conversion factors for calculating the energy value of fibre and erythritol (*regulation 2(4)*); and
- (d) provide for a transitional period for the phasing in of the new provisions (*regulation 3*).

4. A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Nutrition 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.

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STATUTORY INSTRUMENTS

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£4.00