

2004 No. 469

FOOD

**The Food Labelling (Amendment No. 2) Regulations
(Northern Ireland) 2004**

Made - - - - - *10th November 2004*

Coming into operation *25th November 2004*

The Department of Health, Social Services and Public Safety(a) in exercise of the powers conferred on it by Articles 15(1)(e) and (f), 16(1), 25(1) and (3), 26(3) and 47(2) of the Food Safety (Northern Ireland) Order 1991(b) and of all other powers enabling it in that behalf, having had regard in accordance with Article 47(3A) of the said Order to relevant advice given by the Food Standards Agency(c) and after consultation both as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council(d) 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 and in accordance with Article 47(3) and (3B) of the said Order, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as The Food Labelling (Amendment No. 2) Regulations (Northern Ireland) 2004, and shall come into operation on 25th November 2004.

Amendment of the Food Labelling Regulations (Northern Ireland) 1996

2. The Food Labelling Regulations (Northern Ireland) 1996(e) shall be amended in accordance with regulations 3 to 15.

3. In regulation 2(1) (interpretation) –

(a) after the definition of “advertisement” there shall be inserted –

“allergenic ingredient” means an ingredient referred to in Schedule AA1;”;

(b) for the definition of “Directive 2000/13” there shall be substituted –

“Directive 2000/13” means Directive 2000/13/EC of the European Parliament and of the Council(f) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as amended by –

(a) Commission Directive 2001/101/EC(g), which was itself amended by Commission Directive 2002/86/EC(h);

(a) Formerly the Department of Health and Social Services: *see* S.I. 1999/283 (N.I. 1) Article 3(6)
(b) S.I. 1991/762 (N.I. 7) as amended by S.I. 1996/1633 (N.I. 12) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 (c. 28)
(c) Article 47 (3A) and 3(B) were inserted by paragraph 40 of Schedule 5 to the Food standards Act 1999 (c. 28)
(d) O.J. No. L31, 1.2.2002, p. 1
(e) S.R. 1996 No. 383 the relevant amending Regulations are S.R.1998 Nos 253 and 359, S.R. 1999 Nos. 143 and 286, S.R. 2000 Nos. 189 and 303, and S.R. 2003 No. 448
(f) O.J. No. L109, 6.5.2000, p. 29, as corrected by Corrigendum (O.J. No. L124, 25.5.2000, p. 66)
(g) O.J. No. L310, 28.11.2001, p. 19
(h) O.J. No. L305, 7.11.2002, p. 19

(b) the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the treaties on which the European Union is founded(a); and

(c) Directive 2003/89/EC of the European Parliament and of the Council(b),

and as read with Commission Directive 99/10/EC(c) providing for derogations from the provisions of Article 7 of Directive 2000/13/EC and Commission Directive 2002/67/EC(d) on the labelling of foodstuffs containing quinine, and of foodstuffs containing caffeine;”.

4. In regulation 3(1A) (exemptions) after sub-paragraph (a) “or” shall be omitted and the following inserted –

(aA) regulation 44(a) in relation to a contravention of regulation 34B concerning any pre-packed food either contained in an indelibly marked glass bottle intended for re-use and having no label, ring or collar, or the largest surface of whose packaging has an area of less than ten square centimetres; or”

5. In regulation 13 (order of list of ingredients), for paragraph (5) there shall be substituted –

“(5) Where a food consists of, or contains, mixed fruit, vegetables or mushrooms which are used in proportions that are likely to vary and no particular fruit, vegetable or mushroom predominates significantly by weight, those ingredients may be grouped together in the list of ingredients under the designation “fruit”, “vegetables” or “mushrooms” followed by the phrase “in varying proportions”, followed by a list of the fruit, vegetables or mushrooms present; in such a case the total weight of the fruit, vegetables or mushrooms shall determine the order in which this entry appears in the list of ingredients.

(6) Where a food consists of, or contains, mixed spices or herbs and no particular spice or herb predominates significantly by weight, those ingredients may be listed otherwise than in descending order of weight if –

(a) in the case of a food which consists entirely of such a mixture, the heading of the list of ingredients includes or is accompanied by “in variable proportion” or other words indicating the nature of the order in which the ingredients are listed; and

(b) in the case of a food which contains such a mixture, that part of the list where the names of those ingredients appear is accompanied by “in variable proportion” or other words indicating the nature of the order in which those ingredients are listed.

(7) Ingredients constituting less than 2 per cent of the finished product may be listed in a different order after the other ingredients.

(8) In the case of ingredients which –

(a) are similar or mutually substitutable;

(b) are likely to be used in the preparation of a food without altering its nature or its perceived value;

(c) are not additives or allergenic ingredients or ingredients originating from an allergenic ingredient referred to in paragraphs 1 to 11 of Schedule AA1; and

(d) constitute less than 2 per cent of the finished product,

such ingredients may be referred to in the list of ingredients by means of the phrase “contains . . . and/or . . .”, where at least one of no more than two such ingredients is present in the finished product.”.

6. In regulation 14 (names of ingredients) –

(a) O.J. No. L236, 23.9.2003, p. 33

(b) O.J. No. L308, 25.11.2003, p. 15

(c) O.J. No. L69, 16.3.1999, p. 22

(d) O.J. No. L191, 19.7.2002, p. 20

- (a) in paragraphs (4) and (9) there shall be inserted at the beginning “Subject to regulation 34B,”;
- (b) in paragraph (5) after “Subject to paragraph (5A) of this regulation” there shall be inserted “and regulation 34B.”.

7. In regulation 15 (compound ingredients) –

- (a) in paragraphs (3) and (4) there shall be inserted at the beginning “Subject to regulation 34B,”;
- (b) in paragraph (4) after sub-paragraph (a) “or” shall be omitted and for sub-paragraph (b) there shall be substituted –
 - “(b) subject to paragraphs (5) and (6), the composition of the compound ingredient is defined in Community legislation and the compound ingredient constitutes less than 2 per cent of the finished product, or
 - (c) subject to paragraphs (5) and (6), the compound ingredient consists of a mixture of spices or herbs or both and constitutes less than 2 per cent of the finished product.;
- (c) after paragraph (4) there shall be inserted –

“(5) Subject to regulation 17, any additive which is an ingredient of such a compound ingredient as is mentioned in paragraph (4)(b) or (c) shall be named in the list of ingredients in accordance with paragraph (2).

(6) Where an ingredient of such a compound ingredient as is mentioned in paragraph (4)(b) or (c) has been irradiated, the name of that ingredient and the words required by paragraph 2 of Schedule 2 shall be given, except in the case of food which is prepared for patients requiring sterile diets under medical supervision.”.

8. In regulation 17 (ingredients which need not be named) –

- (a) there shall be inserted at the beginning “Subject to regulation 34B,”;
- (b) after paragraph (d) there shall be inserted –
- (e) any substance which is not an additive but which is used in the same way and for the same purpose as a processing aid.”.

9. In regulation 18 (foods which need not bear a list of ingredients) –

- (a) in paragraph (1) there shall be inserted at the beginning “Subject to regulation 34B”;
- (b) in paragraph (3) for “regulations 12 to 17” there shall be substituted “regulations 12 to 17 and 34B”.

10. In regulation 23 (food which is not prepacked and similar food, and fancy confectionery products) after paragraph (2) there shall be inserted the following –

“(2A) Food falling within paragraph (1)(a) or (c) need not be marked or labelled with any of the particulars specified in regulation 34B.”.

11. In regulation 27(1) (certain food sold at catering establishments), for “regulations 32, 33 and 34” there shall be substituted “regulations 32, 33, 34 and 34B”.

12. After regulation 34A (drinks with high caffeine content), there shall be inserted –

“Foods containing allergenic ingredients or ingredients originating from allergenic ingredients

34B.—(1) Subject to paragraph (2), where any food containing any allergenic ingredient, or any ingredient originating from an allergenic ingredient referred to in paragraphs 1 to 11 of Schedule AA1, does not specify the allergenic ingredient in the name of the food, that food shall be marked or labelled with a clear reference to the name of the allergenic ingredient concerned.

(2) In the case of any drink which has an alcoholic strength by volume of more than 1.2 per cent –

- (a) the presence of any allergenic ingredient shall be indicated by marking or labelling the drink with “contains” followed by the name of the allergenic ingredient; and
- (b) the presence of any ingredient originating from an allergenic ingredient referred to in paragraphs 1 to 11 of Schedule AA1 shall be indicated by marking or labelling the drink with “contains” followed by the name of the ingredient including a reference to the allergenic ingredient from which it originates,

unless the name of the allergenic ingredient is specified in the name of the drink or in the list of ingredients, if any.”.

13. In regulation 50 (transitional provision), there shall be inserted at the end –

“(12) In any proceedings for an offence under regulation 44(a), it shall be a defence to prove that –

- (a) the food concerned was marked or labelled before 25th November 2005; and
- (b) the matters constituting the alleged offence would not have constituted an offence under these Regulations if the amendments made by the following provisions of The Food Labelling (Amendment No. 2) Regulations (Northern Ireland) 2004, namely –
 - (i) regulation 3(b),
 - (ii) regulation 5 in so far as it substitutes a new regulation 13(5), and
 - (iii) regulations 6, 7(a), 8, 9, 12 and 15,

had not been in operation when the food was sold.”.

14. Immediately before Schedule A1, there shall be inserted as Schedule AA1 the contents of the Schedule.

15. In Schedule 3 (generic names in list of ingredients), in part I (general) the entries relating to “Crystallised fruit” and “Vegetables” shall be omitted.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 10th November 2004.

(L.S.)

Jim F. Livingstone

A senior officer of the Department of Health, Social Services and Public Safety

SCHEDULE

Regulation 14

NEW SCHEDULE AA1 TO BE INSERTED IN THE FOOD LABELLING REGULATIONS (NORTHERN IRELAND) 1996

“SCHEDULE AA1

Regulations 2(1) and 34B

ALLERGENIC INGREDIENTS

1. The following cereals containing gluten: wheat, rye, barley, oats, spelt, kamut and their hybridised strains
2. Crustaceans
3. Eggs
4. Fish
5. Peanuts
6. Soybeans
7. Milk
8. The following nuts: Almond (*Amygdalus communis L.*), Hazelnut (*Corylus avellana*), Walnut (*Juglans regia*), Cashew (*Anacardium occidentale*), Pecan nut (*Carya illinoiesis (Wangenh.) K. Koch*), Brazil nut (*Bertholletia excelsa*), Pistachio nut (*Pistacia vera*), Macadamia nut and Queensland nut (*Macadamia ternifolia*)
9. Celery
10. Mustard
11. Sesame seeds
12. Sulphur dioxide and sulphites at concentrations of more than 10 mg/kg or 10 mg/litre expressed as SO²”

EXPLANATORY NOTE

(This note is not part of the Regulations.)

1. These Regulations further amend the Food Labelling Regulations (Northern Ireland) 1996 (“the principal Regulations”). These Regulations implement Directive 2003/89/EC of the European Parliament and of the Council (O.J. No. L308, 25.11.2003, p. 15) amending Directive 2000/13/EC as regards indication of the ingredients present in foodstuffs.

2. The Regulations require that in the case of food containing any allergenic ingredient (as defined in regulation 3(a) and the Schedule) or an ingredient originating from an allergenic ingredient referred to in paragraphs 1 to 11 of the Schedule, the food be marked or labelled with a clear reference to the name of the allergenic ingredient concerned (regulations 12 and 14). There are exemptions in the case of food which is not pre-packed, food which is pre-packed for direct sale and fancy confectionery products (regulations 10(b) and 11).

3. By virtue of Article 13(4) of Directive 2000/13/EC of the European Parliament and of the Council (O.J. No. L109, 6.5.2000, p. 29) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, small packages and certain indelibly marked glass bottles are exempt from the allergen labelling requirements of Directive 2003/89/EC. The Regulations extend the allergen labelling requirements to such packages and bottles as a national measure (regulation 26 of the principal Regulations and regulation 4 and 12 of these Regulations refer). The Regulations were accordingly notified in draft to the European Commission under Directive 98/34/EC of the European Parliament and of the Council (O.J. No. L204, 21.7.98, p. 37) laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Directive 98/48/EC of the European Parliament and of the Council (O.J. No. L217, 5.8.98, p. 18).

4. Also in implementation of Directive 2003/89/EC, the Regulations remove the previous exemption from ingredient listing in the case of the ingredients of a compound ingredient which constituted less than 25 per cent of the finished product, whilst providing a limited exemption for some compound ingredients constituting less than 2 per cent of the finished product (regulation 7(b) and (c)). The Regulations make some other adjustments to the detailed rules regarding the order in which ingredients are to be listed (regulation 5) and add a further ingredient to those which do not need to be named (regulation 8(b)). The Regulations make some consequential amendments (regulations 3(b), 6, 7(a), 8(a), 9 and 15) and contain a transitional provision (regulation 13).

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