

2003 No. 2647

FOOD, ENGLAND

**The Food (Provisions relating to Labelling) (England)
Regulations 2003**

Made - - - - *9th October 2003*

Laid before Parliament *17th October 2003*

Coming into force in accordance with regulation 1(2)

The Secretary of State, in exercise of the powers conferred by sections 16(1)(e) and (f), 17(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990(a) and now vested in him(b), having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency and after consultation both as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council(c) 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 section 48(4) and (4B) of that Act, makes the following Regulations:

Title, application and commencement

1.—(1) These Regulations may be cited as the Food (Provisions relating to Labelling) (England) Regulations 2003; they apply in relation to England only.

(2) These Regulations come into force on 7th November 2003 except for regulations 5 to 7 which come into force on 1st July 2004.

Amendment of the Food Labelling Regulations 1996

2. The Food Labelling Regulations 1996(d) shall be amended (in so far as they apply in relation to England) in accordance with regulations 3 to 7.

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

(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 paragraph 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. 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. Regulation 13(4) of S.I. 2000/656 expressly authorises the Secretary of State to amend or revoke existing Regulations made or having effect as if made by the Minister of Agriculture, Fisheries and Food (whether with others or not) under the 1990 Act.

(c) OJ No. L31, 1.2.2002, p.1.

(d) S.I. 1996/1499; relevant amending instruments are S.I. 1998/1398, 1999/747, 1136, 1483, 2000/768, 2254, 2003/474.

- (a) in the definition of “Directive 94/54”, for the words “Directive 79/112” there shall be substituted the words “Directive 2000/13”;
- (b) after the definition of “Directive 99/2” there shall be inserted the following definition —
““Directive 2000/13” means Directive 2000/13/EC of the European Parliament and of the Council(a) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as amended by Commission Directive 2001/101/EC(b), which was itself amended by Commission Directive 2002/86/EC(c), and as read with Commission Directive 1999/10/EC(d) providing for derogations from the provisions of Article 7 of Directive 2000/13 and Commission Directive 2002/67/EC(e) on the labelling of foodstuffs containing quinine, and of foodstuffs containing caffeine;”.

4. In the following provisions —
regulation 3(1)(i) (exemptions),
regulation 19(2)(a)(i) (indication of quantities of certain ingredients or categories of ingredients),
regulation 47(b) (defence in relation to exports),

for the words “Directive 79/112” there shall be substituted the words “Directive 2000/13”.

5. In regulation 14 (names of ingredients) —

- (a) in paragraph (5) there shall be inserted at the beginning the words “Subject to paragraph (5A) of this regulation”;
- (b) after paragraph (5) there shall be inserted the following paragraph —
“(5A) In the case of quinine or caffeine added to or used in a food as a flavouring, quinine or caffeine (as appropriate) shall be identified by name immediately after the word “flavouring”.”.

6. After regulation 34 (foods containing sweeteners, added sugar and sweeteners, aspartame or polyols) there shall be inserted the following regulation —

“Drinks with high caffeine content

34A.—(1) Subject to paragraph (2) of this regulation, in the case of a drink which —

- (a) is intended for consumption without modification and contains caffeine, from whatever source, in a proportion in excess of 150 milligrams per litre, or
- (b) is in concentrated or dried form and after reconstitution contains caffeine, from whatever source, in a proportion in excess of 150 milligrams per litre,

that drink shall be marked or labelled with the words “High caffeine content” in the same field of vision as the name of the drink, and those words shall be followed by a reference in brackets to the caffeine content expressed in milligrams per 100 millilitres.

(2) Paragraph (1) of this regulation shall not apply to any drink based on coffee, tea or coffee or tea extract where the name of the food includes the term “coffee” or “tea”.”.

7. In regulation 50 (transitional provision) there shall be inserted at the end the following paragraph —

(a) OJ No. L109, 6.5.2000, p.29, as corrected by a Corrigendum (OJ No. L124, 25.5.2000, p.66).
(b) OJ No. L310, 28.11.2001, p.19.
(c) OJ No. L305, 7.11.2002, p.19.
(d) OJ No. L69, 16.3.1999, p.22.
(e) OJ No. L191, 19.7.2002, p.20.

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

- (a) the food concerned was marked or labelled before 1st July 2004; and
- (b) the matters constituting the offence would not have constituted an offence under these Regulations if the amendments made by regulations 5 and 6 of the Food (Provisions relating to Labelling) (England) Regulations 2003 had not been in operation when the food was sold.”.

Amendment of the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000

8. In the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000(**a**) —

- (a) in regulation 2(1) (interpretation) —
 - (i) there shall be substituted for the definition of “Directive 79/112” the following definition—

“Directive 2000/13” means Directive 2000/13/EC of the European Parliament and of the Council(**b**) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as amended by Commission Directive 2001/101/EC(**c**), which was itself amended by Commission Directive 2002/86/EC(**d**);”;
 - (ii) in the definition of “Regulation 1139/98” there shall be substituted for the expression “Directive 79/112/EEC” the expression “Directive 2000/13”;
- (b) in regulation 3(1) (exemptions) and regulation 9(b) (defence in relation to exports) there shall be substituted for the expression “Directive 79/112” the expression “Directive 2000/13”.

Signed by authority of the Secretary of State for Health

9th October 2003

Melanie Johnson
Parliamentary Under Secretary of State,
Department of Health

(a) S.I. 2000/768.

(b) OJ No. L109, 6.5.2000, p.29, as corrected by a Corrigendum (OJ No. L124, 25.5.2000, p.66).

(c) OJ No. L310, 28.11.2001, p.19.

(d) OJ No. L305, 7.11.2002, p.19.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

2. These Regulations implement in England Commission Directive 2002/67/EC on the labelling of foodstuffs containing quinine, and of foodstuffs containing caffeine. Directive 2002/67/EC has to be read with Directive 2000/13/EC of the European Parliament and of the Council on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs. These Regulations require information to be given —

- (a) in the ingredients list of foods as to the presence of any quinine or caffeine added or used as a flavouring (regulation 5);
- (b) on the labelling or marking of drinks containing a high level of caffeine, with some exceptions (regulation 6).

These requirements apply with effect from 1st July 2004 (regulation 1(2)). The Regulations contain a transitional provision (regulation 7).

3. With effect from 7th November 2003 the Regulations also update various references in the 1996 Regulations and in the Genetically Modified and Novel Foods (Labelling) (England) Regulations 2000 to Council Directive 79/112/EEC which was consolidated by Directive 2000/13/EC, as amended (regulations 1(2), 3, 4 and 8).

4. A full regulatory impact assessment of the effect that this instrument will have on the costs of business has been prepared and placed in the Library of each House of Parliament together with a Transposition Note setting out how the main elements of Directive 2002/67/EC are transposed in these Regulations. Copies may be obtained from the Food Labelling and Standards Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.

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