

2010 No. 295

FOOD, ENGLAND

**The Food for Particular Nutritional Uses (Miscellaneous
Amendments) (England) Regulations 2010**

<i>Made</i> - - - -	<i>10th February 2010</i>
<i>Laid before Parliament</i>	<i>15th February 2010</i>
<i>Coming into force</i> - -	<i>15th March 2010</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 17(1), 26(1)(a) and 48(1) of the Food Safety Act 1990(a) and now vested in him(b), as read with paragraph 1A of Schedule 2 to the European Communities Act 1972(c).

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 references to Directive 2009/39/EC of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses(d) in specified statutory instruments to be construed as references to that Directive as amended from time to time.

In accordance with section 48(4A) of the Food Safety Act 1990, the Secretary of State 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(e), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

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- (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 1999 Act”. 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, S.I. 2004/2990 and S.I. 2004/3279.
- (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. Those functions, 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 (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) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51).
- (d) OJ No. L124, 20.5.2009, p.21.
- (e) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p.14).

Title, application and commencement

1. These Regulations may be cited as the Food for Particular Nutritional Uses (Miscellaneous Amendments) (England) Regulations 2010, apply in relation to England only and come into force on 15th March 2010.

Amendment of the Food Labelling Regulations 1996

2.—(1) The Food Labelling Regulations 1996(a) are amended in accordance with the following paragraphs in so far as they apply in relation to England.

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

(a) omit the definition of “Directive 89/398”(b);

(b) immediately after the definition of “Directive 2000/13” insert the following definition—

““Directive 2009/39” means Directive 2009/39/EC of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses(c) as amended from time to time;”.

(3) In regulation 3 (exemptions), for sub-paragraph (iv) of paragraph (1) substitute the following sub-paragraph—

“(iv) where applicable, the requirements of Directive 87/250, Directive 90/496, Directive 94/54, Directive 99/2 and Directive 2009/39 are met in respect of that food.”.

Amendment of the Notification of Marketing of Food for Particular Nutritional Uses (England) Regulations 2007

3.—(1) The Notification of Marketing of Food for Particular Nutritional Uses (England) Regulations 2007(d) are amended in accordance with the following paragraphs.

(2) In paragraph (1) of regulation (2) (interpretation), for the definition of “the Directive” substitute the following definition—

““the Directive” means Directive 2009/39 of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses as amended from time to time;”.

(3) In regulation 3 (restriction on sale)—

(a) for paragraph (1) substitute the following paragraph—

“(1) No person who, in respect of a PNU food product of a particular type—

(a) is a manufacturer or an importer referred to in Article 11 of the Directive, but

(b) has failed to comply with—

(i) a requirement to notify the competent authority, as referred to in sub-paragraph (a) or (b) of paragraph (1) of that Article, or

(ii) a requirement to produce anything to the competent authority, as referred to in sub-paragraph (c) of paragraph (1) of that Article,

shall sell a PNU food product of that type. ”; and

(b) in sub-paragraph (b) of paragraph (2) for “Article 9” substitute “Article 11”.

(4) In paragraph (1) of regulation 4 (declaration), for “Article 1(2)” substitute “Article 1(2) and (3)”.

(a) S.I. 1996/1499, amended by S.I. 1998/1398, S.I. 1999/747, S.I. 2000/768, S.I. 2000/2254, S.I. 2003/2647 and S.I. 2004/2824; there are other amending instruments but none is relevant.

(b) Council Directive 89/398/EEC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses (OJ No. L186, 30.6.1989, p.27).

(c) OJ No. L124, 20.5.2009, p.21.

(d) S.I. 2007/181.

Signed by authority of the Secretary of State for Health

10th February 2010

Gillian Merron
Minister of State,
Department of Health

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only, amend the Food Labelling Regulations 1996 (S.I. 1996/1499, as already amended) and the Notification of Marketing of Food for Particular Nutritional Uses (England) Regulations 2007 (S.I. 2007/181) in order to reflect the repeal and replacement of Council Directive 89/398/EC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses (OJ No. L186, 30.6.1989, p.27) by Directive 2009/39/EC of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses (OJ No. L124, 20.5.2009, p.21).

2. These Regulations amend the Food Labelling Regulations 1996 (which extend to the whole of Great Britain), in so far as they apply in relation to England, by omitting the definition of “Directive 89/398” from regulation 2(1) and inserting a definition of “Directive 2009/39” into that provision and substituting a reference to “Directive 2009/39” for the reference to “Directive 89/398” in regulation 3(1)(iv) (*regulation 2*).

3. These Regulations amend the Notification of Marketing of Food for Particular Nutritional Uses (England) Regulations 2007 by substituting a revised definition of “the Directive” for the existing definition of “the Directive” in regulation 2(1) so that it refers to Directive 2009/39/EC instead of Directive 89/398/EEC and substituting references to specified provisions of Directive 2009/39/EC for the existing references to specified provisions of Directive 89/398/EEC in regulations 3 and 4 (*regulation 3*).

4. A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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