

**2004 No. 472**

**FOOD**

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

<i>Made</i> - - - -	<i>2nd November 2004</i>
<i>Laid before the Scottish Parliament</i>	<i>3rd November 2004</i>
<i>Coming into force</i> - -	<i>25th November 2004</i>

The Scottish Ministers, in exercise of the powers conferred by sections 16(1)(e) and (f), 17(1) and (2), 26(1) and (3) and 48(1) of the Food Safety Act 1990(a) and of all other powers enabling them in that behalf, having had regard in accordance with section 48(4A)(b) of that Act to relevant advice given by the Food Standards Agency and after consultation in accordance with section 48(4) and (4B)(c) of that Act, hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Food Labelling Amendment (No. 2) (Scotland) Regulations 2004 and shall come into force on 25th November 2004.

(2) These Regulations extend to Scotland only.

**Amendments to the Food Labelling Regulations 1996**

2. The Food Labelling Regulations 1996(d) are amended in accordance with regulations 3 to 15.

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

(a) after the definition of “advertisement” insert—

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

(b) for the definition of “Directive 2000/13” substitute—

““Directive 2000/13” means Directive 2000/13/EC of the European Parliament and of the Council(e) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as corrected by a corrigendum published on 25th May 2000(f), and as amended by Commission Directive

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(a) 1990 c.16; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c.40), Schedule 9, paragraph 6 and by the Food Standards Act 1999 (c.28) (“the 1999 Act”), Schedule 5, paragraph 10(3); sections 16(1) and 48(1) were amended by the 1999 Act, Schedule 5, paragraph 8; section 17(1) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, Schedule 6; amendments made by Schedule 5 to the 1999 Act shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(c) Section 48(4B) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(d) S.I. 1996/1499, relevantly amended by S.I. 1998/1398, 1999/747, 1136 and 1483, S.S.I. 2000/83 and 309, 2002/524, 2003/578 and 569 and 2004/395.

(e) O.J. No. L 109, 6.5.00, p.29.

(f) O.J. No. L 124, 25.5.00, p.66.

2001/101/EC(a), which was itself amended by Commission Directive 2002/86/EC(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(c) and Directive 2003/89/EC of the European Parliament and of the Council(d), and as read with Commission Directive 99/10/EC(e) providing for derogations from the provisions of Article 7 of Directive 2000/13/EC and Commission Directive 2002/67/EC(f) on the labelling of foodstuffs containing quinine, and of foodstuffs containing caffeine;”.

**4.** In regulation 3(1A) (exemptions) after sub-paragraph (a) omit “or” and insert–

“(aa) regulation 44(1)(a) in relation to a contravention of regulation 34B concerning any prepacked 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) substitute–

“(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; and 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 the words “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 the words “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 composition, 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 in 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 the phrase “contains ... and/or ...”, where at least one of no more than two such ingredients is present in the finished product.”.

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(a) O.J. No. L 310, 28.11.01, p.19.  
(b) O.J. No. L 305, 7.11.02, p.19.  
(c) O.J. No. L 236, 23.9.03, p.33.  
(d) O.J. No. L 308, 25.11.03, p.15.  
(e) O.J. No. L 69, 16.3.99, p.22.  
(f) O.J. No. L 191, 19.7.02, p.20.

**6. In regulation 14 (names of ingredients)–**

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

**7. In regulation 15 (compound ingredients)–**

- (a) at the beginning of paragraphs (3) and (4) insert “Subject to regulation 34B.”;
- (b) for paragraph (4)(b) substitute–
  - “(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.”; and
- (c) after paragraph (4) insert–
  - “(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 the 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) at the beginning insert “Subject to regulation 34B”; and
- (b) after paragraph (d) insert–
  - “(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), at the beginning insert “Subject to regulation 34B”; and
- (b) in paragraph (3) for “regulations 12 to 17” substitute “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) insert–**

“(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” substitute “regulations 32, 33, 34 and 34B”.**

**12. After regulation 34A (drinks with high caffeine content) insert–**

**“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 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 the word “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 the word “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 provisions) insert at the end—

“(12) 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 25th November 2005; and
- (b) the matters constituting the alleged offence would not have constituted an offence under the Food Labelling Regulations 1996 if the amendments made by the Food Labelling Amendment (No. 2) (Scotland) Regulations 2004 had not been in force when the food was marked or labelled.”.

**14.** Immediately before Schedule A1, insert as Schedule AA1 the content of the Schedule to these Regulations.

**15.** In Schedule 3, Part I (generic names in list of ingredients), omit the entries for “Crystallised fruit” and “Vegetables”.

*RHONA BRANKIN*

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh  
2nd November 2004

## SCHEDULE

Regulations 14

### NEW SCHEDULE AA1 TO BE INSERTED IN THE FOOD LABELLING REGULATIONS 1996

#### “SCHEDULE AA1

Regulations 2(1), 13(8)(c)  
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 illinoensis (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 SO<sub>2</sub>.”

## EXPLANATORY NOTE

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

These Regulations, which extend to Scotland only, further amend the Food Labelling Regulations 1996 (S.I. 1996/1499) (“the principal Regulations”) as amended which extend to the whole of Great Britain.

The Regulations implement Directive 2003/89/EC of the European Parliament and of the Council amending Directive 2000/13 as regards indication of the ingredients present in foodstuffs (O.J. No. L 308, 25.11.03, p.15).

The Regulations—

- (a) 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);
- (b) provide for exemptions in the case of food which is not prepacked, food which is prepacked for direct sale and fancy confectionery products (regulations 10 and 11);
- (c) 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));
- (d) make adjustments to the detailed rules regarding the order in which ingredients are to be listed (regulation 5);
- (e) add a further ingredient to those which do not need to be named (regulation 8(b));
- (f) make consequential amendments (regulations 3(b), 6, 7(a), 8(a), 9 and 15); and
- (g) contain a transitional provision (regulation 13).

Article 13(4) of 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 (O.J. No. L 109, 6.5.2000, p.29), exempts small packages and certain indelibly marked glass bottles 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 regulations 4 and 12 of these Regulations). 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. L 204, 21.7.98, p.37) as amended by Directive 98/48/EC of the European Parliament and of the Council (O.J. No. L 217, 5.8.98, p.18).

A regulatory impact assessment, which includes a compliance cost assessment of the effect which these Regulations would have on business costs, has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from the Food Standards Agency, 6th Floor, St. Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.



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**£3.00**

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under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland  
150 11/04 19593

