

2008 No. 180

FOOD

**The Food Labelling (Declaration of Allergens) (Scotland)
Regulations 2008**

<i>Made</i> - - - -	<i>8th May 2008</i>
<i>Laid before the Scottish Parliament</i>	<i>9th May 2008</i>
<i>Coming into force</i> - -	<i>31st May 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(e), 17(1), 26(1)(a) and 48(1) of the Food Safety Act 1990(a), and all other powers enabling them to do so.

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

There has been consultation 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).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Food Labelling (Declaration of Allergens) (Scotland) Regulations 2008 and come into force on 31st May 2008.

(2) These Regulations extend to Scotland only.

Amendment of the Food Labelling Regulations 1996

2.—(1) The Food Labelling Regulations 1996(d) are amended in accordance with paragraphs (2) to (11).

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- (a) 1990 c.16; section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; sections 16(1) and 48(1) were amended by the Food Standards Act 1999 (c.28) (“the 1999 Act”), Schedule 5, paragraph 8; section 17(1) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 48(4) is disapplied in respect of these Regulations by virtue of section 48(4C), inserted by S.I. 2004/2990; 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) 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 Scotland Act 1998 (c.48). Insofar as not so transferred and in so far as relating to food (including drink) including the primary production of food, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).
- (b) Section 48(4A) was inserted by the 1999 Act, section 40(1) and Schedule 5, paragraph 21.
- (c) O.J. No. L 31, 1.2.02, p.1, as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.03, p.4), Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 7.4.06, p.3) and Commission Regulation (EC) No. 202/2008 (O.J. No. L 60, 5.3.08, p.17).
- (d) S.I. 1996/1499; relevantly amended by S.I. 1998/1398, 1999/747, 1136 and 1483 and S.S.I. 2000/83, 2002/524, 2003/578, 2004/395 and 472, 2005/456 and 222 and 2007/534.

(2) In regulation 2(1) (interpretation), in the definition of Directive 2000/13 for the words “Commission Directive 2005/26/EC” to the end substitute “Commission Directive 2007/68/EC amending Annex IIIa to Directive 2000/13/EC of the European Parliament and of the Council as regards certain food ingredients^(a)”;

(3) In regulation 13(8)(c)(ii) (order of list of ingredients) after “ingredients” insert “referred to in Schedule AA1”.

(4) In regulation 13(8)(c)(iii) omit—

(i) “paragraphs 1 to 11 of”; and

(ii) from the words “other than” to the end.

(5) In regulation 34B(1) and (2)(b) (foods containing allergenic ingredients or ingredients originating from allergenic ingredients) omit “paragraphs 1 to 11 of”.

(6) In regulation 34B(1) for “subject to paragraphs (2) and (3)” substitute “subject to paragraph (2)”.

(7) In regulation 34B(2)(b), omit “subject to paragraph (3)”.

(8) Omit regulation 34B(3).

(9) In regulation 50 (transitional provision), after paragraph (14) insert the following—

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

(a) the food concerned was sold before 31st May 2009 or marked or labelled before 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(1) to (8), (10) and (11) of the Food Labelling (Declaration of Allergens) (Scotland) Regulations 2008^(b) had not been in force when the food was sold.”.

(10) For the contents of Schedule AA1 (allergenic ingredients) substitute the contents of the Schedule to these Regulations.

(11) Omit Schedule 2A (list of ingredients which originate from allergenic ingredients and in respect of which the allergen labelling requirements do not apply).

Revocations

3.—(1) The Schedule to the Food Labelling Amendment (No. 2) (Scotland) Regulations 2004^(c) is revoked.

(2) The following Regulations are revoked—

(a) the Food Labelling Amendment (No. 3) (Scotland) Regulations 2005^(d); and

(b) the Food Labelling (Declaration of Allergens) (Scotland) Regulations 2007^(e).

SHONA ROBISON

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
8th May 2008

(a) O.J. No. L 310, 28.11.07, p.11.

(b) S.I. 2008/ 180

(c) S.S.I. 2004/472.

(d) S.S.I. 2005/542.

(e) S.S.I. 2007/534.

SCHEDULE

Regulation 2(9)

Content to be inserted as Schedule AA1 to the Food Labelling Regulations 1996

1. Cereals containing gluten (i.e. wheat, rye, barley, oats, spelt, kamut or their hybridised strains),
except:
 - (a) wheat-based glucose syrups including dextrose⁽¹⁾;
 - (b) wheat-based maltodextrins⁽¹⁾;
 - (c) glucose syrups based on barley; and
 - (d) cereals used for making distillates or ethyl alcohol of agricultural origin for spirit drinks and other alcoholic beverages.
2. Crustaceans.
3. Eggs.
4. Fish,
except:
 - (a) fish gelatine used as a carrier for vitamin or carotenoid preparations; and
 - (b) fish gelatine or Isinglass used as a fining agent in beer and wine.
5. Peanuts.
6. Soybeans,
except:
 - (a) fully refined soybean oil and fat⁽¹⁾;
 - (b) natural mixed tocopherols (E306), natural D-alpha tocopherol, natural D-alpha tocopherol acetate, natural D-alpha tocopherol succinate from soybean sources;
 - (c) vegetable oils derived phytosterols and phytosterol esters from soybean sources; and
 - (d) plant stanol ester produced from vegetable oil sterols from soybean sources.
7. Milk (including lactose),
except:
 - (a) whey used for making distillates or ethyl alcohol of agricultural origin for spirit drinks and other alcoholic beverages; and
 - (b) lactitol.
8. Nuts, i.e. almonds (*Amygdalus communis L.*), hazelnuts (*Corylus avellana*), walnuts (*Juglans regia*), cashews (*Anacardium occidentale*), pecan nuts (*Carya illinoensis (Wangenh.) K. Koch*), Brazil nuts (*Bertholletia excelsa*), pistachio nuts (*Pistacia vera*), macadamia nuts and Queensland nuts (*Macadamia ternifolia*),
except:

nuts used for making distillates or ethyl alcohol of agricultural origin for spirit drinks and other alcoholic beverages.
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.
13. Lupin.
14. Molluscs.

⁽¹⁾ The exception only applies to products derived from these products in so far as the process they have undergone is not likely to increase the level of allergenicity assessed by the European Food Safety Authority for the relevant product from which they originated.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations extend to Scotland only. They further amend the Food Labelling Regulations 1996 (“the principal regulations”) which extend to the whole of Great Britain.

These Regulations implement Commission Directive No. 2007/68/EC (O.J. No. L 310, 28.11.2007, p.11) amending Annex IIIa of Directive 2000/13/EC of the European Parliament and of the Council listing the ingredients which must under all circumstances appear on the labelling of foodstuffs. The ingredients in question are those that are likely to cause an allergic reaction in some consumers.

These Regulations amend the principal regulations in respect of the labelling requirements for foods containing allergenic ingredients, including labelling exemptions for certain processed forms of those ingredients, provide a transitional period for foods that are marked, labelled or sold before 31st May 2009 and make various other minor and consequential amendments.

A full Regulatory Impact Assessment of the effect that these Regulations are likely to have on business costs has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency (Scotland), Labelling Division, 6th Floor, St Magnus House, 25 Guild Street, Aberdeen, AB11 6NJ.

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