

2009 No. 328

FOOD

**The Food Labelling (Nutrition Information) (Scotland)
Regulations 2009**

Made - - - - - *23rd September 2009*

Laid before the Scottish Parliament *24th September 2009*

Coming into force - - - *30th October 2009*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(e), 17(1) 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 (Nutrition Information) (Scotland) Regulations 2009 and come into force on 30th October 2009.

(2) These Regulations extend to Scotland only.

(a) 1990 c.16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; sections 16, 17 and 48 were amended by paragraph 8 of Schedule 5 to the Food Standards Act 1999 (c.28) (“the 1999 Act”); section 17 was also amended by paragraph 12 of Schedule 5 to the 1999 Act and section 48 was also amended by paragraph 21 of Schedule 5 to the 1999 Act and 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) (“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. Insofar as not so transferred and insofar 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 section 40(1) and paragraph 21 of Schedule 5 of the 1999 Act.

(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).

Amendment of the Food Labelling Regulations 1996

2.—(1) The Food Labelling Regulations 1996^(a) are amended in accordance with paragraphs (2) to (6).

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

(a) in the definition of “Directive 90/496” after the words “Commission Directive 2003/120/EC”^(b) insert “and Commission Directive 2008/100/EC^(c)”; and

(b) after the definition of “fat” insert the following:—

““fibre”, in the context of nutrition labelling, means carbohydrate polymers with three or more monomeric units, which are neither digested nor absorbed in the human small intestine and belong to the following categories:—

- (a) edible carbohydrate polymers naturally occurring in the food as consumed;
- (b) edible carbohydrate polymers which have been obtained from food raw material by physical, enzymatic or chemical means and which have a beneficial physiological effect demonstrated by generally accepted scientific evidence; or
- (c) edible synthetic carbohydrate polymers which have a beneficial physiological effect demonstrated by generally accepted scientific evidence;”.

(3) In regulation 50 (transitional provision), after paragraph (15) add the following as paragraph (16):—

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

- (a) the food concerned—
 - (i) if sold, was sold before the 31st October 2012, and
 - (ii) if advertised for sale, was advertised for sale before 31st October 2012 but not on or after 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 of the Food Labelling (Nutrition Information) (Scotland) Regulations 2009 had not been in force when the food was sold or advertised, as the case may be.”.

(4) For the entries in Table A (vitamins in respect of which claims may be made) in Schedule 6, Part II (restricted claims), substitute the entries set out in Schedule 1 to these Regulations.

(5) For the entries in Table B (minerals in respect of which claims may be made) in Schedule 6, Part II (restricted claims), substitute the entries set out in Schedule 2 to these Regulations.

(6) In Schedule 7, Part I (presentation of prescribed nutrition labelling), paragraph 5—

(a) at the end of sub-paragraph (g) for the full stop substitute a semi-colon; and

(b) after sub-paragraph (g) add the following sub-paragraphs:—

“(h) 1 gram of fibre shall be deemed to contribute 8kJ (2 kcal);

(i) 1 gram of erythritol shall be deemed to contribute 0kJ (0kcal).”.

SHONA ROBISON

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
23rd September 2009

(a) 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, 2004/269, 395 and 472, 2005/456 and 222, 2007/534 and 2008/129, 180 and 395.

(b) Inserted by S.S.I. 2004/269.

(c) O.J. No. L 285, 29.10.08, p.9.

SCHEDULE 1

Regulation 2(4)

Entries to be substituted in Table A (vitamins in respect of which claims may be made) in Schedule 6, Part II, to the Food Labelling Regulations 1996

<i>Column 1</i> <i>Vitamin</i>	<i>Column 2</i> <i>Recommended daily allowance</i>
Vitamin A	800 µg
Vitamin D	5 µg
Vitamin E	12 mg
Vitamin K	75 µg
Vitamin C	80 mg
Thiamin	1.1 mg
Riboflavin	1.4 mg
Niacin	16 mg
Vitamin B6	1.4 mg
Folic acid	200 µg
Vitamin B12	2.5 µg
Biotin	50 µg
Pantothenic acid	6 mg

SCHEDULE 2

Regulation 2(5)

Entries to be substituted in Table B (minerals in respect of which claims may be made) in Schedule 6, Part II, to the Food Labelling Regulations 1996

<i>Column 1</i> <i>Mineral</i>	<i>Column 2</i> <i>Recommended daily allowance</i>
Potassium	2000 mg
Chloride	800 mg
Calcium	800 mg
Phosphorus	700 mg
Magnesium	375 mg
Iron	14 mg
Zinc	10 mg
Copper	1 mg
Manganese	2 mg
Fluoride	3.5 mg
Selenium	55 µg
Chromium	40 µg
Molybdenum	50 µg
Iodine	150 µg

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations further amend the Food Labelling Regulations 1996 (“the principal Regulations”) in so far as they apply in relation to Scotland. The principal Regulations extend to the whole of Great Britain.

2. These Regulations implement in Scotland Commission Directive 2008/100/EC amending Council Directive 90/496/EEC on nutrition labelling for foodstuffs as regards recommended daily allowances, energy conversion factors and definitions (O.J. No. L 285, 29.10.08, p.9) (“the Commission Directive”).

3. These Regulations implement the Commission Directive by amending the principal Regulations so as to—

- (a) include a definition of “fibre” (regulation 2(2));
- (b) provide for a transitional period for the phasing in of the new provisions (regulation 2(3));
- (c) amend the lists of vitamins and minerals in respect of which nutrition claims may be made, both as regards the substances included and the recommended daily allowances (regulation 2(4) and (5), with Schedules 1 and 2); and
- (d) provide conversion factors for calculating the energy value of fibre and erythritol (regulation 2(6)).

4. A full 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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