

2010 No. 48

FOOD

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

Made - - - - *11th February 2010*

Laid before the Scottish Parliament *12th February 2010*

Coming into force - - *15th March 2010*

The Scottish Ministers make 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), as read with paragraph 1A of Schedule 2 to the European Communities Act 1972(b), and all other powers enabling them to do so.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Scottish Ministers that it is expedient for certain references to Directive 2009/39/EC of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses(c) to be construed as references to that instrument as amended from time to time.

In accordance with section 48(4A) of the Food Safety Act 1990, the Scottish Ministers have had regard to relevant advice given by the Food Standards Agency(d).

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(e).

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- (a) 1990 c.16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Section 17(1) was amended by the Food Standards Act 1999 (c.28) (“the 1999 Act”), Schedule 5, paragraphs 8 and 12; section 48(1) was amended by the 1999 Act, Schedule 5, paragraph 8; section 48(4) was disapplied in respect of these Regulations by virtue of section 48(4C) which was inserted by regulation 5(b) of the Food Safety Act 1990 (Amendment) Regulations 2004 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, in so far as within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not so transferred 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) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51).
- (c) O.J. No. L 124, 20.5.2009, p.21.
- (d) Section 48(4A) was inserted by the Food Standards Act 1999 (c.28), Schedule 5, paragraph 21.
- (e) 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, 29.9.2003, p.4), Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 8.4.2006, p.3), Commission Regulation (EC) No. 202/2008 (O.J. No. L 60, 5.3.2008, p.17) and Regulation (EC) No. 596/2009 of the European Parliament and of the Council (O.J. No. L 188, 18.7.2009, p.14).

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Food for Particular Nutritional Uses (Miscellaneous Amendments) (Scotland) Regulations 2010 and come into force on 15th March 2010.

(2) These Regulations extend to Scotland only.

Amendment of the Food Labelling Regulations 1996

2.—(1) The Food Labelling Regulations 1996(a) are amended in accordance with the following paragraphs.

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

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

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

““Directive 2009/39” means Directive 2009/39/EC 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 (exemptions), for sub-paragraph (iv) of paragraph (1) substitute—

“(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 (Scotland) Regulations 2007

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

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

““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—

“(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 paragraph (2)(b) for “Article 9” substitute “Article 11”.

(a) S.I. 1996/1499, amended by S.I. 1998/1398, S.I. 1999/747, S.S.I. 2000/309, S.S.I. 2003/578, and S.S.I. 2004/472; there are other amending instruments but none is relevant.

(b) S.S.I. 2007/37.

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

St Andrew’s House,
Edinburgh
11th February 2010

SHONA ROBISON
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to Scotland only, amend the Food Labelling Regulations 1996 and the Notification of Marketing of Food for Particular Nutritional Uses (Scotland) Regulations 2007 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 (O.J. No. L 186, 30.6.1989, p.27) (“the original Directive”), by Directive 2009/39/EC of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses (“the new Directive”).

These Regulations amend the Food Labelling Regulations 1996 by omitting the definition for the old Directive from regulation 2(1) and inserting a definition for the new Directive into that provision and substituting a reference to the new Directive for the reference to the old Directive in regulation 3(1)(iv) (*regulation 2*).

These Regulations amend the Notification of Marketing of Food for Particular Nutritional Uses (Scotland) Regulations 2007 by substituting a revised definition to refer to the new Directive instead of the old Directive and substituting references to specified provisions of the new Directive for the existing references to specified provisions in the old Directive in regulations 3 and 4 (*regulation 3*).

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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