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STATUTORY INSTRUMENTS

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**2008 No. 1188**

**FOOD, ENGLAND**

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

<i>Made</i>	- - - -	<i>24th April 2008</i>
<i>Laid before Parliament</i>		<i>1st May 2008</i>
<i>Coming into force</i>	- -	<i>31st May 2008</i>

The Secretary of State makes 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<sup>(1)</sup>, and now vested in him<sup>(2)</sup>.

In accordance with section 48(4A) of that Act, he 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<sup>(3)</sup>, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

**Title, application and commencement**

1. These Regulations may be cited as the Food Labelling (Declaration of Allergens) (England) Regulations 2008, apply in relation to England only and come into force on 31st May 2008.

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- (1) 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 1999Act”). 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 and S.I. 2004/2990.
- (2) 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. Functions of “the Ministers” 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 (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..
- (3) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Commission Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p3).

**Amendment of the Food Labelling Regulations 1996**

2.—(1) The Food Labelling Regulations 1996(4) are amended (in so far as they apply in relation to England) in accordance with paragraphs (2) to (7).

(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(5);”.

(3) In regulation 13(8)(c) —

- (a) omit the expression “paragraphs 1 to 11 of”; and
- (b) omit the passage beginning with the words “other than” and ending with the words “that allergenic ingredient”.

(4) In regulation 34B(1) —

- (a) for the expression “paragraphs (2) and (3)” substitute “paragraph (2)”; and
- (b) omit the expression “paragraphs 1 to 11 of”.

(5) In regulation 34B(2)(b) —

- (a) omit the expression “subject to paragraph (3) of this regulation,”; and
- (b) omit the expression “paragraphs 1 to 11 of”.

(6) 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 of the Food Labelling (Declaration of Allergens) (England) Regulations 2008(6) had not been in operation when the food was sold.”.

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

**Revocations**

3. The following Regulations or provisions are revoked —

- (a) Regulation 34B(3) of, and Schedule 2A to, the Food Labelling Regulations 1996;
- (b) The Schedule to the Food Labelling (Amendment) (England) (No.2) Regulations 2004(7);
- (c) The Food Labelling (Amendment) (England) (No.2) Regulations 2005(8);
- (d) The Food Labelling (Amendment) (England) (No.2) (Amendment) Regulations 2005(9);
- (e) The Food Labelling (Declaration of Allergens) (England) Regulations 2007(10).

(4) S.I. 1996/1499, as last amended by S.I. 2007/3256. Regulations 13(8)(c) and 34B and the associated Schedule AA1 were inserted by S.I. 2004/2824. Regulation 34B was amended by S.I. 2005/2057; Schedule AA1 was amended by S.I. 2007/3256. Paragraph (13) of regulation 50 was inserted by S.I. 2005/899, and paragraph (14) of that regulation by S.I. 2007/3256.

(5) OJ No. L310, 28.11.2007, p.11.

(6) S.I. 2008/

(7) S.I. 2004/2824.

(8) S.I. 2005/2057.

(9) S.I. 2005/2969.

(10) S.I. 2007/3256.

Signed by authority of the Secretary of State for Health

24th April 2008

*Dawn Primarolo*  
Minister of State  
Department of Health

## SCHEDULE

Regulation 2(7)

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<sup>(1)</sup>;
  - (b) wheat-based maltodextrins<sup>(1)</sup>;
  - (c) glucose syrups based on barley;
  - (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;
  - (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<sup>(1)</sup>;
  - (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 from phytosterols and phytosterol esters from soybean sources;
  - (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;
  - (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 SO<sub>2</sub>.

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(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.

13. Lupin.

14. Molluscs.

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- (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.
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## 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 England. The principal Regulations extend to the whole of Great Britain.

2. These Regulations implement in England Commission Directive No. [2007/68/EC](#) (OJ No. L310, 28.11.2007, p.11) amending Annex IIIa to Directive [2000/13/EC](#) of the European Parliament and of the Council as regards certain food ingredients. The ingredients in question are those that are likely to cause an allergic reaction in some consumers.

3. The 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, and provide a transitional period for foods that are marked, labelled or sold before the 31st May 2009.

4. A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Labelling, Standards and Allergy Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.