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STATUTORY INSTRUMENTS

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**2009 No. 2801**

**FOOD, ENGLAND**

**The Food Labelling (Declaration of  
Allergens) (England) Regulations 2009**

*Made* - - - - *19th October 2009*  
*Laid before Parliament* *22nd October 2009*  
*Coming into force* - - *20th November 2009*

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 2009, apply in relation to England only and come into force on 20th November 2009.

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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 1999 Act”). 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 Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468 with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p.14).

## 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 paragraph (2).

(2) In regulation 50 (transitional provision), for paragraph (15) substitute the following —

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

- (a) (i) in the case of wine in which lysozyme (produced from egg) is used, or in which albumin (produced from egg) or a milk (casein) product has been used as a fining agent, the food concerned was sold before 31st December 2010 or marked or labelled before that date, or
- (ii) in the case of any other food, 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 2009(5) had not been in operation when the food was sold.”.

## Revocations

3. The following provision is revoked —

- (a) Regulation 2(6) of The Food Labelling (Declaration of Allergens) (England) Regulations 2008(6).

Signed by authority of the Secretary of State for Health

19th October 2009

*Gillian Merron*  
Minister of State  
Department of Health

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(4) S.I. 1996/1499, as last amended by S.I. 2009/2538. 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 and by SI 2008/1188. Paragraph (13) of regulation 50 was inserted by S.I. 2005/899, paragraph (14) of that regulation by S.I. 2007/3256 and paragraph 15 of that regulation by S.I. 2008/1188.

(5) S.I. 2009/[—].

(6) S.I. 2008/1188.

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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 the amendment made to Directive [2007/68/EC](#) (OJ No. L310, 28.11.2007, p.11) by Commission Regulation No. [415/2009/EC](#) (OJ No. L125, 21.05.2009, p.52). This Directive itself amends Annex IIIa to Directive [2000/13/EC](#) of the European Parliament and of the Council as regards certain food ingredients (OJ No. L109, 6.5.2000, p.29). 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, by extending from 31st May 2009 to 31st December 2010 the transitional period for egg-derived lysozyme and for albumin (produced from egg) or milk (casein) products when used as fining agents in wine, in respect of wines that are marked, labelled or sold before that date.

4. An impact assessment has not been prepared for this instrument as it has no impact on business or the public or third sectors.