
STATUTORY INSTRUMENTS

2009 No. 3252 (W.282)

FOOD, WALES

**The Food Supplements (Wales) and Addition
of Vitamins, Minerals and Other Substances
(Wales) (Amendment) Regulations 2009**

<i>Made</i>	- - - -	<i>8 December 2009</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>10 December 2009</i>
<i>Coming into force</i>	- -	<i>1 January 2010</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(a) and (e), 17(1) and (2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990⁽¹⁾.

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

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972⁽²⁾ and it appears to the Welsh Ministers that it is expedient for any reference to an Annex to Directive [2002/46/EC](#) of the European Parliament and of the Council on the approximation of the laws of the Member States relating to food supplements⁽³⁾ to be construed as a reference to that Annex as amended from time to time.

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⁽⁴⁾ there has been open and transparent public consultation during the preparation of the following Regulations.

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- (1) [1990 c. 16](#). Functions of the Secretary of State under the Food Safety Act 1990, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. [1999/672](#)) and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 ([2006 c. 32](#)).
- (2) [1972 c. 68](#).
- (3) OJ No. L183, 12.7.2002, p.51, as last amended by Commission Regulation [\(EC\) No. 1170/2009](#) amending Directive [2002/46/EC](#) of the European Parliament and of Council and Regulation [\(EC\) No. 1925/2006](#) of the European Parliament and of the Council as regards the lists of vitamin and minerals and their forms that can be added to foods, including food supplements (OJ No. L314, 1.12.2009, p.36).
- (4) OJ No. L31, 1.2.2002, p.1, as 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).

Title and commencement

1. The title of these Regulations is The Food Supplements (Wales) and Addition of Vitamins, Minerals and Other Substances (Wales) (Amendment) Regulations 2009 and they come into force on 1 January 2010.

Amendment of the Food Supplements (Wales) Regulations 2003

2.—(1) The Food Supplements (Wales) Regulations 2003⁽⁵⁾ are amended in accordance with the following paragraphs.

(2) In paragraph (1) of regulation 2 (interpretation), for the definition “Directive 2002/46” there are substituted the following definitions—

““Directive 90/496” (“*Cyfarwyddeb 90/496*”) means Council Directive [90/496/EEC](#) on nutrition labelling for foodstuffs⁽⁶⁾ as amended by 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⁽⁷⁾;

“Directive 2001/83” (“*Cyfarwyddeb 2001/83*”) means Directive [2001/83/EC](#) of the European Parliament and of the Council on the Community code relating to medicinal products for human use⁽⁸⁾ as last amended by Directive [2009/53/EC](#) of the European Parliament and of the Council amending Directive [2001/82/EC](#) and Directive [2001/83/EC](#), as regards variations to the terms of marketing authorisations for medicinal products⁽⁹⁾;

““Directive 2002/46” (“*Cyfarwyddeb 2002/46*”) means Directive [2002/46/EC](#) of the European Parliament and of the Council on the approximation of the laws of the Member States relating to food supplements as last amended by Commission Regulation (EC) No. [1170/2009](#) amending Directive [2002/46/EC](#) of the European Parliament and of Council and Regulation (EC) No. [1925/2006](#) of the European Parliament and of the Council as regards the lists of vitamin and minerals and their forms that can be added to foods, including food supplements⁽¹⁰⁾”.

(3) Immediately after paragraph (3) of regulation 2 (interpretation) there is inserted the following paragraph—

“(4) In these Regulations any reference to an Annex to Directive 2002/46 is a reference to that Annex as amended from time to time.”.

(4) In regulation 3 (scope of Regulations), for paragraph (2) there is substituted the following paragraph—

“(2) These Regulations do not apply to medicinal products as defined by Directive 2001/83.”.

(5) In regulation 5 (prohibitions on sale relating to composition of food supplements)—

(a) at paragraph (1), omit the words “subject to paragraph (3)”

(b) at sub-paragraph (a) of paragraph (1), for the words ‘column 1 of Schedule 1’ there is substituted the words “Annex I to Directive 2002/46”;

(c) at sub-paragraph (b)(i) of paragraph (1), for the words “Schedule 2” there is substituted the words “Annex II to Directive 2002/46”; and

(d) paragraph (3) is omitted.

(6) In regulation 6 (restrictions on sale relating to labelling etc of food supplements)—

⁽⁵⁾ S.I. [2003/1719](#) (W.186), amended by S.I. [2005/2759](#), S.I. [2005/3254](#) (W.247) and S.I. [2007/1076](#) (W.114).

⁽⁶⁾ OJ No. L276, 6.10.1990, p.40.

⁽⁷⁾ OJ No. L285, 29.10.2008, p.9.

⁽⁸⁾ OJ No. L311, 28.11.2001, p.67.

⁽⁹⁾ OJ No. L168, 30.6.2009, p.33.

⁽¹⁰⁾ OJ No. L314, 1.12.2009, p.36.

- (a) for sub-paragraph (b) of paragraph (3) there is substituted the following sub-paragraph—
- “(b) in the case of a vitamin or mineral listed in Annex I to Directive 2002/46 be given using the relevant unit specified in brackets after the name of that vitamin or mineral;” and
- (b) for sub-paragraph (e) of paragraph (3) there is substituted the following sub-paragraph—
- “(e) in the case of a vitamin or mineral listed in the Annex to Directive 90/496, be expressed also as a percentage (which may also be given in graphical form) of the relevant recommended daily allowance specified in that Annex.”
- (7) Immediately after regulation 11 (application of various provisions of the Act) add the following regulation—

“Transitional provision

12. In any proceedings for an offence under regulation 9 relating to a breach of regulation 6 or 7 consisting of a contravention of or a failure to comply with regulation 6(3)(e), it shall be a defence to prove that—

- (a) the food supplement concerned was sold before the 31st October 2012; and
- (b) the matters constituting the alleged offence would not have constituted an offence under those Regulations if the amendments made by regulation 2(2) and (6)(b) of the Food Supplements (Wales) and Addition of Vitamins, Minerals and Other Substances (Wales) (Amendment) Regulations 2009 had not been in operation when the food was sold.”

(8) Schedule 1 (vitamins and minerals which may be used in the manufacture of food supplements) and Schedule 2 (form of vitamin and mineral substances which may be used in the manufacture of food supplements) are omitted.

Amendment of the Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007

3.—(1) The Addition of Vitamins, Minerals and Others Substances (Wales) Regulations 2007(**11**) are amended in accordance with the following paragraph.

(2) In paragraph (1) of regulation 2 (interpretation), for the definition “the EC Regulation”, there is substituted the following definition—

““the EC Regulation” (“*y Rheoliad CE*”) means Regulation (EC) No. 1925/2006 of the European Parliament and of the Council on the addition of vitamins and minerals and of certain other substances to foods(**12**) as last amended by Commission Regulation (EC) No. 1170/2009 amending Directive 2002/46/EC of the European Parliament and of Council and Regulation (EC) No. 1925/2006 of the European Parliament and of the Council as regards the lists of vitamin and minerals and their forms that can be added to foods, including food supplements.”

(11) S.I. 2007/1984 (W.165).

(12) OJ No. L404, 30.12.2006. p.26.

Status: *This is the original version (as it was originally made). Wales
Statutory Instruments are not carried in their revised form on this site.*

8 December 2009

Gwenda Thomas
Deputy Minister for Social Services, under
authority of the Minister for Health and Social
Services, one of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to Wales, amend the Food Supplements (Wales) Regulations 2003 (S.I.2003/1719 as already amended by S.I. 2005/2759, S.I. 2005/3254 (W.247) and S.I. 2007/1076 (W.114)) and the Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007 (S.I. 2007/1984 (W.165)) in order to provide for the execution and enforcement of Commission Regulation (EC) No. 1170/2009 amending Directive 2002/46/EC of the European Parliament and of Council and Regulation (EC) No. 1925/2006 of the European Parliament and of the Council as regards the lists of vitamin and minerals and their forms that can be added to foods, including food supplements (OJ No. L314, 1.12.2009, p.36). These Regulations also update the references to directives referred to in the Food Supplements (Wales) Regulations 2003.

2. These Regulations amend the Food Supplements (Wales) Regulations 2003 by—

- (a) substituting a revised definition of Directive 2002/46 and inserting definitions of Directive 90/496 and Directive 2001/83 (*regulation 2(2)*);
- (b) providing that a reference to an Annex to Directive 2002/46 is a reference to that Annex as amended from time to time (*regulation 2(3)*);
- (c) revising references to directives to refer to the definitions of those directives (*regulation 2(4) and (6)(b)*);
- (d) removing those provisions which implemented a part of Directive 2002/46 which lapses on 1 January 2010 (*regulation 2(5)(a) and (d)*);
- (e) providing that those Regulations refer to the Annexes to Directive 2002/46 rather than the Schedules to those Regulations and making consequential amendments (*regulation 2(5)(b) and (c), (6)(a) and (8)*); and
- (f) providing a transitional period for the phasing in of the new provisions relating to Directive 90/496 (*regulation 2(7)*).

3. These Regulations amend the Addition of Vitamins, Minerals and Other Substances (Wales) Regulations 2007 substituting a revised definition of Regulation (EC) No.1925/2006 (*regulation 3(2)*).

4. A full regulatory impact assessment has been undertaken in respect of these Regulations and is available from the Food Standards Agency, 11th Floor Southgate House, Cardiff CF10 1EW.