

EXPLANATORY MEMORANDUM TO
THE FOOD LABELLING (DECLARATION OF ALLERGENS) (ENGLAND)
REGULATIONS 2009

2009 No. 2801

1. This explanatory memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty.

2. Purpose of the Instrument

2.1 These Regulations amend the Food Labelling Regulations 1996 to extend a temporary exemption from certain labelling requirements for wine. This exemption applies to the declaration on label of lysozyme¹ and of albumin (produced from egg) or milk products (in the form of casein) used as fining agents in wine. These are all ingredients which may cause an allergic reaction in some people.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 This instrument implements Commission Regulation (EC) No 415/2009 of 20th May 2009 amending 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. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 Separate, but parallel, instruments apply to Wales, Scotland and Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Food Labelling Regulations 1996 (as amended) aim to ensure that consumers are properly informed about the nature and substance of the foods they buy and are

¹ Lysozyme can be used to treat the must prior to fermentation to inhibit naturally present bacteria that might interfere with the alcoholic fermentation carried out by the yeast and thus produce an unpleasant wine. It may also be used after fermentation to inhibit the bacteria that cause a malolactic fermentation in wine. This is usually a desirable reaction in cool, northern wine-making regions but is normally undesirable in warmer or hot regions.

protected from false or misleading descriptions. These Regulations include a list of 14 allergens that have to be indicated on the label whenever they, or their derivatives, are used as deliberate ingredients in pre-packed food, including alcoholic drinks.

7.2 The 1996 Regulations have since been further amended a number of times to implement more changes to EC legislation as regards allergenic ingredients. In some cases certain foods or their derivatives have been added to the list of ingredients that must be declared on label, and in other cases ingredients have been removed, notably where it has been established that due to processing the ingredient no longer contains the allergenic component. In an amendment introduced last year, among others measures the ingredients mentioned in paragraph 2.1 above were required to be declared on wine labels, with a phase-in period for compliance that expired on the 31st May 2009.

7.3 However, due to technical difficulties encountered by the wine industry in meeting this deadline for compliance, the European Commission has since made a further amendment to this legislation. This amendment extends the deadline to 31st December 2010.

8. Consultation outcome

8.1 The Food Standards Agency (FSA) maintains a database of interested parties who have requested to be consulted whenever any changes to food labels are considered. This database covers stakeholders in food manufacturers, trade organisations, local authority enforcement officers and groups representing the interests of their members. In addition, it also holds the details of many individuals.

8.2 Approximately 850 people were consulted about this proposed labelling change. The consultation ran from 6th–31st July this year. Four responses were received from organisations based in England and one from Northern Ireland. Most of the comments received related to the accompanying guidance note. However, one response pointed out that lysozyme is used in wine, rather than used as a fining agent, whilst two others sought clarity as to whether the scope of the SI extended to wine used in food as an ingredient. A summary of their responses and the actions taken by the Agency will be placed on the FSA website.

9. Guidance

9.1 The Agency has produced guidance on the allergen labelling rules. This has been amended to reflect this change in the legislation and will be available from the Food Standards Agency's website

9.2 No publicity events are planned to promote this change as the change in effect is to maintain the status quo.

10. Impact

10.1 As wine producers and manufacturers are now not required to change the labels on wine until the end of 2010 there is no incremental impact from this legislation and therefore an Impact Assessment (IA) has not been prepared for this Statutory Instrument.

10.2 The Local Authorities Coordinators of Regulatory Services (LACORS) were consulted and they agreed that there were no additional costs from enforcing this Statutory Instrument.

11. Regulating small business

11.1 The reason for extending the deadline for the expiry of the temporary exemption for labelling for these ingredients used in wine was to reduce the burden on businesses from making this labelling change shortly before another labelling change arising from the implementing rules of Council Regulation (EC) No. 479/2008 on the description, designation, presentation and protection of certain wine sectors. This would have been particularly onerous on small businesses. By harmonising the two label changes this will reduce the financial burden on industry.

12. Monitoring and review

12.1 Measuring the success of this SI will be difficult because it does not introduce any change. The change will take effect at the end of 2010 when wine producers will be required to label:

- Lysozyme used in wine
- Albumin used as a fining agent in wine
- Casein used as a fining agent in wine

However, wine producers will be able to phase the introduction of the necessary changes to their labels and minimise the cost implications.

12.2 If the manufacturers are able to demonstrate that these ingredients are no longer present in the final product and therefore there is no allergenic potential from wine using these ingredients, the situation will be reviewed.

13. Contact

13.1 Dionne Davey at the Food Standards Agency (tel: 020 7276 8531 or e-mail: dionne.davey@foodstandards.gsi.gov.uk). Ms Davey can answer any queries regarding the instrument.

TRANSPOSITION NOTE: THE FOOD LABELLING (DECLARATION OF ALLERGENS) (ENGLAND) REGULATIONS 2009

This Transposition Note set out how the main elements of Commission Regulation (EC) No. 415/2009.

COMMISSION REGULATION (EC) No 415/2009 of 20 May 2009 amending 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 (OJ No. L125, 21.5.2009, p.52)			
Article	Purpose	Implementation	Responsibility
Article 1	<p>Following Article 3 of Directive 2007/68/EC the following paragraph is added:</p> <p>'By way of derogation from the second paragraph of this Article, Member States shall allow wines, as defined in Annex IV to Council Regulation (EC) No 479/2008 (*) placed on the market or labelled before 31 December 2010, and which comply with the provisions of Directive 2005/26/EC, to be marketed until stocks are exhausted.</p>	<p>Delays the introduction of the labelling of lysozyme (produced from egg) used in wine and of egg- and milk-based fining agents used in wine from 31 May 2009 until 31 December 2010.</p>	<p>Secretary of State for Health</p>