

2024 No. 165

FOOD, ENGLAND

**The Nutrition and Health Claims (England) (Amendment)
Regulations 2024**

<i>Made</i> - - - -	<i>19th February 2024</i>
<i>Laid before Parliament</i>	<i>20th February 2024</i>
<i>Coming into force</i> - -	<i>1st October 2024</i>

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 16(1)(e) and (f), 17(2), 26(1)(a), (2)(e) and (f) and (3) and 48(1) of the Food Safety Act 1990(a).

In accordance with section 48(4A) of that Act, the Secretary of State has had regard to relevant advice given by the Food Standards Agency(b).

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(c), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Nutrition and Health Claims (England) (Amendment) Regulations 2024 and come into force on 1st October 2024.

(2) These Regulations extend to England and Wales.

Amendment of the Nutrition and Health Claims (England) Regulations 2007

2.—(1) The Nutrition and Health Claims (England) Regulations 2007(d) are amended as follows.

(2) In regulation 2(1) (interpretation), after the definition of “the Regulation”, insert—

““specified provision of the Regulation” means—

(a) Article 3 (general requirements relating to all claims);

(a) 1990 c.16. Sections 16(1) and 48(1) were amended by paragraphs 7 and 8 of Schedule 5 to the Food Standards Act 1999 (c.28) (“the 1999 Act”). Section 17(2) was amended by paragraphs 7, 8 and 12(b) of Schedule 5 to the 1999 Act and by S.I. 2011/1043. Section 26(3) was amended by Schedule 6 to the 1999 Act.

(b) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the Food Standards Act 1999.

(c) OJ No. L31, 1.2.2002, p.1, last amended by Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019 (OJ No. L231, 6.9.2019, p.1-28).

(d) S.I. 2007/2080, as amended by S.I. 2010/1768 and 2014/1855.

- (b) Article 4(3) (restrictions on claims that may be made on alcoholic beverages);
 - (c) Article 6(2) (requirement for use of claims to be justified);
 - (d) Article 7 (requirements for nutrition information);
 - (e) Article 8(1) (requirements for nutrition claims);
 - (f) Article 9 (requirements for comparative claims);
 - (g) Article 10(1), (2) or (3) (requirements for health claims);
 - (h) Article 12 (prohibition of certain health claims); or
 - (i) Article 14(2) (requirements for reduction of disease risk claims).”.
- (3) In regulation 5 (offences and penalties)—
- (a) in paragraph (1)—
 - (i) omit “(1)” so that the existing text becomes regulation 5;
 - (ii) for “the provisions of the Regulation specified in paragraph (2)”, substitute “a specified provision of the Regulation”;
 - (b) omit paragraph (2).
- (4) In regulation 6 (application of various provisions of the Act)—
- (a) after paragraph (b), insert—
 - “(ba) section 10(1) and (2) (improvement notices) with the modifications specified in Part 1 of the Schedule;”;
 - (b) after paragraph (f), insert—
 - “(fa) section 32(1) to (8) (powers of entry) with the modifications specified in Part 2 of the Schedule;
 - (fb) section 33 (obstruction of officers);”;
 - (c) after paragraph (g), insert—
 - “(ga) section 35 (punishment of offences) with the modification specified in Part 3 of the Schedule;”;
 - (d) after paragraph (i), insert—
 - “(ia) section 37(1), (3), (5) and (6) (appeals) with the modifications specified in Part 4 of the Schedule;
 - (ib) section 39 (appeals against improvement notices) with the modifications specified in Part 5 of the Schedule; and”.
- (5) Omit regulation 7 (obstruction of officers and provision of information etc.).
- (6) Before the Explanatory Note, insert the following Schedule—

Modification of provisions of the Act

PART 1

Modification of section 10 of the Act (improvement notices)

1. Section 10 is to be read as if, for subsection (1), there were substituted—

“(1) If an authorised officer of an enforcement authority has reasonable grounds for believing that a person is failing to comply with a specified provision of the Regulation, the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”)—

- (a) state the officer’s grounds for believing that the person is failing to comply with a specified provision of the Regulation;
- (b) specify the matters which constitute the person’s failure so to comply;
- (c) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.”.

PART 2

Modification of section 32 of the Act (powers of entry)

2. Section 32 is to be read as if, for subsection (1)(a) to (c), there were substituted —

- “(a) to enter any premises within the authority’s area for the purpose of ascertaining whether there is or has been any contravention of a specified provision of the Regulation; and
- (b) to enter any business premises, whether within or outside the authority’s area, for the purpose of ascertaining whether there is on the premises any evidence of any contravention within that area of a specified provision of the Regulation;”.

PART 3

Modification of section 35 of the Act (punishment of offences)

3. Section 35 is to be read as if, after subsection (1A), there were inserted—

“(1B) A person guilty of an offence under section 10(2) shall be liable, on summary conviction, to a fine.”.

PART 4

Modification of section 37 of the Act (appeals)

4. Section 37 is to be read as if—

- (a) in subsection (1)—
 - (i) paragraphs (b) and (c) were omitted, and
 - (ii) for “a magistrates’ court or, in Scotland, to the sheriff”, there were substituted “the First-tier Tribunal”,
- (b) for subsection (3), there were substituted—

“(3) The appeals procedure under the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 applies to appeals made under subsection (1).”
- (c) for subsection (5), there were substituted—

“(5) The notice of appeal period under rule 22 of the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 applies to appeals made under subsection (1).”, and
- (d) in subsection (6)—
 - (i) for “(3) or (4), there were substituted “(1)”, and
 - (ii) in paragraph (a), for “a magistrates’ court or to the sheriff”, there were substituted “the First-tier Tribunal”.

PART 5

Modification of section 39 of the Act (appeals against improvement notices)

5. Section 39 is to be read as if—

- (a) in subsection (1) for “court” (in both places), there were substituted “First-tier Tribunal”, and
- (b) in subsection (3), “for want of prosecution” were omitted.”.

Signed by authority of the Secretary of State for Health and Social Care

19th February 2024

Andrea Leadsom
Parliamentary Under Secretary of State
Department of Health and Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Nutrition and Health Claims (England) Regulations 2007 (S.I. 2007/2080) (“the 2007 Regulations”).

The 2007 Regulations provide for the enforcement of certain provisions (“the specified provisions”) of Regulation (EC) No.1924/2006 of the European Parliament and of the Council on nutrition and health claims made on foods (“Regulation 1924/2006”) (which is assimilated direct legislation under the Retained EU Law (Revocation and Reform) Act 2023 (c. 28)) by making it an offence to contravene those provisions and by applying certain provisions of the Food Safety Act 1990 (c.16) (“the 1990 Act”), with modifications, to such nutrition and health claims. The specified provisions are set out in regulation 2(1) of the 2007 Regulations, having been moved from regulation 5 of the 2007 Regulations (see regulation 2(2) and (3)(b)).

These Regulations amend the 2007 Regulations to make changes to this enforcement regime. This includes the application (where appropriate, with modifications) of the following provisions of the 1990 Act—

- (a) section 10(1), to enable an improvement notice to be served, requiring compliance with the specified provisions;
- (b) section 10(2), to make a failure to comply with an improvement notice a criminal offence;
- (c) section 32, to give authorised officers of an enforcement authority powers to enter premises to ascertain whether there is any breach, or evidence of a breach, of the specified provisions;
- (d) section 33, to make it an offence to obstruct persons acting in execution of the 2007 Regulations, to fail to give such persons assistance or information or to give them false or misleading information;
- (e) section 35, to provide for punishment of such offences; and
- (f) section 37, to make provision in relation to appeals against improvement notices (specifically to provide for appeals against improvement notices to go to the First-tier Tribunal).

These Regulations also revoke regulation 7 of the 2007 Regulations (offence for obstruction of officers) to reflect the application instead, with modifications, of the corresponding offence in section 33 of the 1990 Act.

A full regulatory impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector or community bodies is foreseen.

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