

2008 No. 1268 (W.128)

FOOD, WALES

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations further amend the Food Labelling Regulations 1996 (“the principal Regulations”) in so far as they apply in relation to Wales. The principal Regulations extend to the whole of Great Britain.

These Regulations implement in Wales 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 likely to cause an allergic reaction in some consumers.

The Regulations amend the principal Regulations in respect of the labelling requirements for foods containing allergenic ingredients, and provide a transitional period for foods that are marked, labelled or sold before 31 May 2009.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Food Standards Agency, 11th Floor, Southgate House, Wood Street, Cardiff, CF10 1EW.

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

Made 6 May 2008

Laid before the National

Assembly for Wales 8 May 2008

Coming into force 31 May 2008

The Welsh Minsters make 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(1).

(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.

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 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 53 of the Scotland Act 1998 (1998 c.46) as read with section 40(2) of the 1999 Act.

In accordance with section 48(4A) of that Act, they have 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⁽¹⁾, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is the Food Labelling (Declaration of Allergens) (Wales) Regulations 2008 and they come into force on 31 May 2008.

(2) These Regulations apply in relation to Wales.

Amendment of the Food Labelling Regulations 1996

2.—(1) The Food Labelling Regulations 1996⁽²⁾ are amended in so far as they apply in relation to Wales 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⁽³⁾”;

(3) In regulation 13(8)(c)—

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

(5) In regulation 34B(2)(b)—

(1) 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, p.3).

(2) S.I. 1996/1499, as last amended by S.I. 2007/3379 (W.301). Regulation 34B and the associated Schedule AA1 were inserted by S.I. 2004/3022 (W.261). Regulation 34B was amended by S.I. 2005/2835 (W.200); Schedule AA1 was amended by S.I. 2007/3379 (W.301). Paragraph (13) of regulation 50 was inserted by S.I. 2005/1309 (W.91), and paragraph (14) of that regulation by S.I. 2007/3379 (W.301).

(3) OJ No. L310, 28.11.207, p.11.

- (a) omit the words “subject to paragraph (3) of this regulation,”; and
 - (b) omit the words “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 is 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) (Wales) Regulations 2008(1) had not been in operation when the food was sold.”.
- (7) For the contents of Schedule AA1 (allergenic ingredients) substitute the content 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) (Wales) (No.2) Regulations 2004(2);
 - (c) The Food Labelling (Amendment) (Wales) (No.2) Regulations 2005(3);
 - (d) The Food Labelling (Amendment) (Wales) (No.2) (Amendment) Regulations 2005(4);
 - (e) The Food Labelling (Declaration of Allergens) (Wales) Regulations 2007(5).

(1) S.I. 2008/ 1268 (W. 128).
(2) S.I. 2004/3022 (W.261).
(3) S.I. 2005/2835 (W.200).
(4) S.I. 2005/3626 (W.241).
(5) S.I. 2007/3379 (W.301).

Gwenda Thomas

Under authority of the Minister for Health and Social
Services, one of the Welsh Ministers

6 May 2008

SCHEDULE

Regulation 2(7)

Content to be inserted as Schedule A1 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⁽¹⁾;
 - (b) wheat-based maltodextrins⁽¹⁾;
 - (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⁽¹⁾;
 - (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.*), hazlenuts (*Corylus avellana*), walnuts (*Juglans regia*), cashews (*Anacardium occidentale*), pecan nuts (*Carya illinoiesis (Wangenh.) K.Koch*), Brazil nuts (*Bertholletia excelsa*), pistachio nuts (*Pistacia vera*), macadamia nuts and Queensland nuts (*Macadamia terniflora*),

except:

(a) 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 SO₂.
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.”.