

2007 No. 2080

FOOD, ENGLAND

The Nutrition and Health Claims (England) Regulations 2007

<i>Made</i> - - - -	<i>18th July 2007</i>
<i>Laid before Parliament</i>	<i>25th July 2007</i>
<i>Coming into force</i> - -	<i>1st October 2007</i>

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

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(c), 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 Nutrition and Health Claims (England) Regulations 2007, apply in relation to England only and come into force on 1st October 2007.

Interpretation

2.—(1) In these Regulations —
“the Act” means the Food Safety Act 1990;

(a) 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 26(3) was amended by Schedule 6 to the 1999 Act. 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

(b) 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. Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by 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 (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.

(c) 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).

“food authority” does not include —

- (a) the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and Middle Temple); or
- (b) the council of a district of a non-metropolitan county except where the county functions have been transferred to that council pursuant to a structural change;

“port health authority” means —

- (c) in relation to the London port health district, the Common Council of the City of London, and
- (d) in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984^(a), a port health authority for that district constituted by order under section 2(4) of that Act;

“the Regulation” means Regulation (EC) No. 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on foods^(b).

(2) Expressions used in these Regulations and in the Regulation have the same meaning in these Regulations as they do in that Regulation.

(3) Any reference to a numbered Article is a reference to the Article so numbered in the Regulation.

Competent Authorities

3. The competent authority for the purposes of the Regulation —

- (a) in relation to Articles 1(4), 15(2), 16(2) and 18(2) is the Food Standards Agency, and
- (b) in relation to Article 6(3) is —
 - (i) each port health authority in its district, and
 - (ii) outside such districts, each food authority in its area.

Enforcement

4. Each port health authority within its district and each food authority within its area shall execute and enforce the provisions of these Regulations and of the Regulation.

Offences and Penalties

5.—(1) Subject to the derogation contained in Article 1(3) (relating to trade marks etc) and to the transitional measures contained in Article 28, any person who contravenes or fails to comply with the provisions of the Regulation specified in paragraph (2) is guilty of an offence and liable —

- (a) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine or both;
- (b) on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding the statutory maximum or both.

(2) The specified provisions are —

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

(a) 1984 c.22.

(b) The revised text of this Regulation is now set out in a Corrigendum (OJ No. L12, 18.1.2007, p.3).

- (g) Article 10(1), (2) and (3) (requirements for health claims);
- (h) Article 12 (prohibition of certain health claims); and
- (i) Article 14(2) (requirements for reduction of disease risk claims).

Application of various provisions of the Act

6. The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part of it is to be construed as a reference to these Regulations —

- (a) section 2 (extended meaning of “sale” etc);
- (b) section 3 (presumption that food is intended for human consumption);
- (c) section 20 (offences due to the fault of another person);
- (d) section 21 (defence of due diligence) as it applies for the purposes of section 14 or 15;
- (e) section 22 (defence of publication in the course of business);
- (f) section 30(8) (which relates to documentary evidence);
- (g) section 34 (time limit for prosecution);
- (h) section 36 (offences by bodies corporate);
- (i) section 36A (offences by Scottish partnerships); and
- (j) section 44 (protection of officers acting in good faith).

Obstruction of officers and provision of information etc

7.—(1) Any person who —

- (a) intentionally obstructs any person acting in the execution of these Regulations; or
- (b) without reasonable cause, fails to give to any person acting in the execution of these Regulations any assistance or information which that person may reasonably require of him,

is guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding level 5 on the standard scale or both.

(2) Any person who, in purported compliance with any requirement mentioned in paragraph (1)(b), knowingly or recklessly provides information that is false or misleading in any material particular, is guilty of an offence and liable —

- (a) on conviction on indictment, to a term of imprisonment not exceeding two years or to a fine or both;
- (b) on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding the statutory maximum or both.

(3) Nothing in paragraph (1)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

Amendment of the Food Labelling Regulations

8.—(1) The Food Labelling Regulations 1996^(a) are amended in relation to England in accordance with paragraph (2).

(2) After paragraph (4) of regulation 41, insert the following paragraph —

“(5) Nothing in regulation 40 or in Schedule 6 or 8 shall operate to prohibit or, as the case may be, restrict a claim made in accordance with the conditions of Regulation (EC)

(a) S.I. 1996/1499. There have been amendments to these Regulations, but none are relevant.

1924/2006 of the European Parliament and of the Council on nutrition and health claims made on foods(a).”.

Signed by authority of the Secretary of State for Health.

18th July 2007

Dawn Primarolo
Minister of State,
Department of Health

(a) The revised text of this Regulation is now set out in a corrigendum (OJ No. L12, 18.1.2007, p.3).

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only, make provision for the execution and enforcement of Regulation (EC) No 1924/2006 of the European Parliament and of the Council on nutrition and health claims made on foods, as corrected by a Corrigendum (OJ No. L12, 18.1.2007, p3), “the EC Regulation”.

2. The Regulations —

- (a) designate the competent authorities for the purposes of certain Articles of the EC Regulation (*regulation 3*);
- (b) specify the enforcement authorities (*regulation 4*);
- (c) provide that, subject to certain derogations and transitional measures specified in the EC Regulation where relevant, it is an offence —
 - (i) to make nutrition or health claims that do not in general comply with the requirements of the EC Regulation and in particular that are misleading or make certain specifically prohibited types of claim;
 - (ii) to make claims on alcoholic drinks other than to the very limited extent permitted by the EC Regulation;
 - (iii) to make a claim which cannot be scientifically justified;
 - (iv) to fail to provide the prescribed nutrition information when making a health claim;
 - (v) to make a nutrition claim which is not one of the ones listed in the Annex to the EC Regulation;
 - (vi) to make a comparative nutrition claim that does not comply with the requirements of the EC Regulation;
 - (vii) to make a health claim that is not authorised under the procedures provided for in the EC Regulation and is not accompanied by certain specified information in the labelling or other presentation;
 - (viii) to make a health claim of a type specifically prohibited by the EC Regulation; or
 - (ix) in the case of health claims relating to the reduction of disease risk, to fail to accompany the claim with the statement prescribed in the EC Regulation (*regulation 5*).

3. The Regulations also —

- (a) apply certain provisions of the Food Safety Act 1990 for the purposes of these Regulations (*regulation 6*);
- (b) provide that, subject to certain limitations, it is an offence to obstruct, fail to give information to or intentionally mislead anyone executing and enforcing these Regulations (*regulation 7*); and
- (c) make an amendment to the Food Labelling Regulations 1996 relating to the areas where there is some overlap between those Regulations and the EC Regulation (*regulation 8*).

4. 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 Nutrition Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC 2B 6NH and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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