

## HEALTH (FOODS FOR PARTICULAR NUTRITIONAL USES) REGULATIONS 1991

The Minister for Health, in exercise of the powers conferred on her by sections 5 of the Health Act, 1947 (No. 28 of 1947) (as amended by the European Communities (Health Act, 1947, Amendment of sections 54 and 61) Regulations 1991 subsection (3) of section 38 of the Health Act of 1953 (No. 26 of 1953) and section 6 of the Health Act, 1970 (No. 1 of 1970 ) and, after consultation with the Minister for Industry and Commerce and the Minister for Agriculture and Food, hereby makes the following Regulations:—

### REG 1

1. These Regulations may be cited as the Health (Foods for Particular Nutritional Uses) Regulations, 1991.

### REG 2

2. (1) The Health (Foods for Particular Nutritional Uses) Regulations, 1982 (S.I. No. 272 of 1982) are hereby revoked.  
(2) These Regulations shall come into operation on the 31st day of December, 1991.

### REG 3

3. (1) In these Regulations, unless the context otherwise requires:—  
"the Act" means the Health Act, 1947;  
"advertising" means the making of any pronouncement in the course of a trade, business or profession for the purpose of promoting the supply of goods or services;  
"approved examiner" means a public analyst or any person, or class of person approved by the Minister for Health to analyse food for the purposes of Regulations made under Part V of the Act;  
"authorised officer" means an authorised officer for the purposes of Part IX of the Act;  
"claim" means any representation which states, suggests or implies that a food has particular qualities relating to its nutritional properties, nature, processing, composition, identity, origin or provenance, but does not include a simple listing of ingredients;  
"container" includes any form of packaging and any wrapper or band;  
"energy statement" has the meaning assigned to it in First Schedule to these Regulations;  
"food" has the meaning assigned to it in the Act;  
"labelling" means any words, particulars, trade marks, pictorial matter or symbol relating to a food to be sold as such to the ultimate consumer and placed on any packaging, document, notice, ring or collar accompanying or referring to such a food, cognate words shall be construed accordingly;  
"pre-packaged food" means any single item for presentation as such to the ultimate consumer, consisting of the food itself and the packaging into which it was put before being offered for sale, whether such packaging encloses the food completely or partially, but in any case in such a way that the contents cannot be altered without opening or changing the packaging;

"public analyst" means an analyst appointed by a health board to carry out the duties of a public analyst for the area of such health board or an analyst designated by a health board to be the public analyst for its area;

"sell" includes supply, offer or expose for sale or have in possession for sale and cognate words shall be construed accordingly;

(2) Any reference in these Regulations to an owner or to a person responsible for a food manufactured specially for a class of persons at (a), (b) or (c) of paragraph 1 of article 4 shall, in the case of food purchased from a vending machine, be construed as a reference—

( a ) where the name and address of the proprietor of the machine is stated on the machine and such address is in the State, to such proprietor;

( b ) in other cases, to the occupier of the premises at or on which the machine stands or to which it is affixed.

(3) In the case of a food manufactured specially for a class of persons at (a), (b) or (c) of paragraph 1 of article 4 and sold from a vending machine, without prejudice to any other labelling requirements imposed by these Regulations, there shall appear on the front of the machine a notice indicating the name of the food, unless the name appears on the label of the food in such a manner as to be easily visible and clearly legible.

(4) Any reference to a label borne on a container shall be construed as a reference to any legible marking on the container.

(5) Any reference in these Regulations to a numbered article or schedule shall, unless the reference is to an article or schedule of specified Regulations, be construed as a reference to the article or schedule bearing the number in these Regulations.

(6) Foodstuffs for particular nutritional uses are foodstuffs which, owing to their special composition or manufacturing process, are clearly distinguishable from foodstuffs for normal consumption, which are suitable for their claimed nutritional purposes and which are marketed in such a way as to indicate such suitability.

#### REG 4

4. (1) A person shall not make a claim, in the labelling or advertising of food that a food is suitable for fulfilling the particular nutritional characteristics of—

( a ) a class of persons whose digestive process or metabolism is disturbed, or

( b ) a class of persons who, by virtue of their special physiological condition, obtain special benefit from a controlled consumption of certain substances, or

( c ) infants or young children in good health.

unless—

(i) in the case of a food which has been specially manufactured for that class of persons—

( a ) the food is capable of fulfilling its claimed nutritional purpose, and

( b ) the food is marketed in such a way as to indicate its suitability for that class of persons, and

( c ) the name or description of the food is accompanied by an indication of its particular nutritional characteristics, and

( d ) the food is labelled to indicate the particular elements of its qualitative and quantitative composition or special manufacturing process that enables it to fulfil its claimed nutritional purpose, and

( e ) the food is labelled with an energy statement, and

( f ) the food, when sold by retail, is prepackaged.

(ii) in the case of a food which has not been specially manufactured for that class of persons—

( a ) the food is capable of fulfilling its claimed nutritional purpose, and

( b ) the food is labelled to indicate the particular elements of its qualitative and quantitative composition or special manufacturing process that enables it to fulfil its claimed nutritional purpose, and

( c ) the food is labelled with an energy statement.

(2) A person shall not make a claim, in the labelling or advertising of food, that the food has been specially made for a class of person at (a), (b) or (c) of sub-article 1 of this article, unless:

(i) the food has been specially made for that class of persons; and

(ii) the conditions set out in paragraph 1 (i) of this article are satisfied.

(3) In the case of a food which has not been manufactured specially for a class of persons at (a), (b) or (c) of sub-article 1 of this article, the following shall be prohibited in the labelling or advertising or presentation of that food:

(i) the use of the word "dietetic" or "dietary", or cognate words either alone or in conjunction with other words, to designate such foods, and

(ii) all other markings or any presentation likely to give the impression that the food has been manufactured specially for a class of persons at (a), (b) or (c) of paragraph 1 of this article.

## REG 5

5. (1) A person shall not make a claim, in the labelling or advertising of a food manufactured specially for a class of persons at (a), (b) or (c) of sub-article (1) of article 4 that the food is capable of preventing, treating or curing human disease or imply such properties.

(2) A person shall not use the word "health", either alone or in conjunction with other words, in the labelling or advertising of a food manufactured specially for a class of persons at (a), (b) or (c) of sub-article 1 of article 4.

## REG 6

6. (1) A person who makes a claim in the labelling or advertising of a new food that such food has been specially made for or is suitable for fulfilling the particular nutritional characteristics of a class of person at (a), (b) or (c) of sub-article 1 of article 4 shall notify the Minister for Health in writing within seven days of the fact of making such a claim. Such notification shall be accompanied by:

(i) a model of the label proposed for the food;  
(ii) an indication as to whether or not the product is on sale in any other Member State of the European Economic Community, and, if so, the name of such Member State and the name of the recipient of the first notification;  
(iii) any other information the Minister may request for the purpose of establishing compliance with these Regulations.

(2) In this article "new food" means—

(i) in the case of a food manufactured specially for a class of persons at (a), (b) or (c) of sub-article (1) of article 4, and in respect of which a claim as described in the said sub-article is made a food which was not imported, manufactured, prepared, distributed or sold in the State prior to the coming into force of these Regulations;

(ii) in the case of a food which has not been manufactured specially for a class of person at (a), (b) or (c) of sub-article (1) of article 4, a food in respect of which a claim as described in sub-article (1) of article 4 was not made prior to the coming into force of these Regulations.

(3) The provisions of sub-articles (1) and (2) of this article shall not apply in the case of a food which belongs to one of the categories listed in the Second Schedule.

(4) Where the Minister for Health is of the view that a food in respect of which a claim is made that it is suitable for fulfilling the particular nutritional characteristics of a class of person at (a), (b) or (c) of sub-article (1) of article 4 does not comply with these Regulations or endangers human health, she may take appropriate measures, including the temporary suspension or restriction of trade in that product, in order to have such food removed from sale.

#### REG 7

7. A person shall not import, manufacture, prepare, distribute or sell a food which contravenes these Regulations.

#### REG 8

8. In any proceedings for an offence under these Regulations, it shall be a defence for the person charged to show that the food in respect of which the offence is alleged to have been committed was intended for export and complied with the importing country's domestic food legislation relevant to the alleged offence.

#### REG 9

9. These Regulations shall be enforced in the functional area of a health board by the health board.

#### REG 10

10. (1) Where a sample of any food has been certified under the Health (Official Control of Food) Regulations, 1991 (S.I. No. 332 of 1991) not to comply with these Regulations, an authorised officer may seize, remove and detain such food as being food which is

unfit for human consumption.

(2) With the consent in writing of the owner or person responsible for such food, an authorised officer may destroy or otherwise dispose of it so as to prevent its use for human consumption.

(3) An authorised officer who has seized any food in pursuance of this article may, on giving notice in writing to the owner or person responsible for such food of his intention to do so, apply to a Justice of the District Court for an order directing that such food be destroyed or otherwise disposed of as being food which is unfit for human consumption.

(4) A Justice of the District Court to whom the application is made for an order under sub-article (3) of this article shall, if satisfied that such food does not comply with these Regulations, order that it be destroyed or otherwise disposed of after such period, not exceeding fourteen days, as may be specified in such order, as being food which is unfit for human consumption and an authorised officer shall destroy or dispose of it accordingly.

## REG 11

11. A person shall give to any authorised officer all reasonable assistance that the officer may require in the performance of his duties under these Regulations and such assistance shall include the giving of information in relation to the composition and use of any such food and the identity of the person from whom or the place from which any such food has been obtained and the person to whom and the place to which it has been consigned or the manner in which it has otherwise been disposed of.

## FIRST SCHEDULE

Energy Statement.

"Energy statement" means a statement of:—

- ( a ) the energy value expressed in kilojoules and kilocalories, of each hundred grammes or hundred millilitres of the food, and any part thereof, as is appropriate, and
- ( b ) the amount of carbohydrates, protein and fat contained in each hundred grammes or hundred millilitres of the food, and any part thereof, as is appropriate.

## SECOND SCHEDULE.

1. Infant formulae.
2. Follow-up milk and other follow-up foods.
3. Baby foods.
4. Low-energy and energy-reduced foods intended for weight control.
5. Dietary foods for special medical purposes.
6. Low-sodium foods, including low-sodium or sodium-free dietary salts.
7. Gluten-free foods.
8. Foods intended to meet the expenditure of intense muscular effort, especially for sportsmen.
9. Foods for persons suffering from carbohydrate-metabolism disorders (diabetes).

GIVEN under the Official Seal of the Minister for Health, this 16th day of December, 1991.

MARY O'ROURKE,  
Minister for Health.

#### EXPLANATORY NOTE.

These regulations revoke the Health (Foods for Particular Nutritional Uses) Regulations 1982 (S.I. No. 272 of 1982) and bring into effect revised regulations. The purpose of the revised regulations is to prevent persons making a claim in the labelling or advertising of food in relation to fulfilling particular nutritional characteristics unless the food is capable of fulfilling the characteristics and criteria as laid down in these regulations. Provision is also made for the regulation of claims in relation to labelling and advertising of new foods. The importation, manufacture, preparation, distribution or sale of food contrary to these regulations is also prohibited. Authorised officers are also empowered to seize, detain and dispose of foods which have been certified as not complying with these regulations, in certain circumstances.

These regulations cited as the Health (Food for Particular Nutritional Uses) Regulations, 1991 came into effect from 31st December, 1991.