

2007 No. 2591

FOOD, ENGLAND

**The Food for Particular Nutritional Uses (Miscellaneous
Amendments) (England) Regulations 2007**

<i>Made</i>	- - - -	<i>3rd September 2007</i>
<i>Laid before Parliament</i>		<i>11th September 2007</i>
<i>Coming into force</i>	- -	<i>15th October 2007</i>

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

In accordance with section 48(4A) of the Food Safety Act 1990, the Secretary of State 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 Food for Particular Nutritional Uses (Miscellaneous Amendments) (England) Regulations 2007; they apply in relation to England only and come into force on 15th October 2007.

(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 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, as last amended by Commission Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p.3).

Amendment of the Infant Formula and Follow-on Formula Regulations 1995

2.—(1) The Infant Formula and Follow-on Formula Regulations 1995(a) are amended in accordance with paragraph (2) in so far as they apply in relation to England.

(2) In regulation 22 (offences and enforcement)—

- (a) in paragraph (1), insert at the beginning the words “Subject to paragraph (2B),”; and
- (b) immediately after paragraph (2A), add the following paragraph—

“(2B) A person shall not be considered to have contravened or failed to comply with the provisions contained in regulation 2 where the sale which would otherwise have constituted a contravention of or a failure to comply with those provisions is the sale of an infant formula falling within the derogation set out in Article 1 of Commission Regulation (EC) No. 1609/2006 authorising the placing on the market of infant formulae based on hydrolysates of whey protein derived from cows’ milk protein for a two-year period(b).”.

Amendment of the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997

3.—(1) The Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997(c) are amended in accordance with paragraph (2) in so far as they apply in relation to England.

(2) In regulation 4 (labelling, advertising and presentation) omit the words “or to a reduction in the sense of hunger or an increase in the sense of satiety”.

Amendment of the Medical Food (England) Regulations 2000

4.—(1) The Medical Food (England) Regulations 2000(d) are amended in accordance with paragraph (2).

(2) In regulation 2 (interpretation), for the definition of “the Directive” substitute the following definition—

““the Directive” means Commission Directive 1999/21/EC on dietary foods for special medical purposes(e) as amended by the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded(f) and Commission Directive 2006/82/EC adapting Directive 91/321 on infant formulae and follow-on formulae and Directive 1999/21/EC on dietary foods for special medical purposes, by reason of the accession of Bulgaria and Romania(g);”.

Amendment of the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (England) Regulations 2002

5.—(1) The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (England) Regulations 2002(h) are amended in accordance with paragraph (2).

(2) In paragraph (5) of regulation 3 (restrictions on sale) for the words “1st January 2007” substitute the words “1st January 2010”.

(a) S.I. 1995/77, to which there are amendments not relevant to these Regulations.

(b) OJ No. L299, 28.10.2006, p.9.

(c) S.I. 1997/2182, to which there is an amendment not relevant to these Regulations.

(d) S.I. 2000/845; relevant amendment instrument is S.I. 2004/2145.

(e) OJ No. L91, 7.4.1999, p.29, as read with the Corrigendum at OJ No. L2, 5.1.2000, p.79.

(f) OJ No. L236, 23.9.2003, p.33.

(g) OJ No. L362, 20.12.2006, p.94.

(h) S.I. 2002/1817, amended by S.I. 2004/649; there are other amending instruments but none is relevant.

Amendment of the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (England) Regulations 2003

6.—(1) The Processed Cereal-based Foods and Baby Foods for Infants and Young Children (England) Regulations 2003^(a) are amended in accordance with paragraph (2).

(2) In paragraph (1) of regulation 2 (interpretation), for the definition of “the Directive” substitute the following definition –

““the Directive” means Commission Directive 2006/125/EC on processed cereal-based foods and baby foods for infants and young children^(b)”.

Signed by authority of the Secretary of State for Health

3rd September 2007

Ben Bradshaw
Minister of State,
Department of Health

(a) S.I. 2003/3207, to which there is an amendment not relevant to these Regulations.
(b) OJ No. L339, 6.12.2006, p.16.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only, amend the Regulations identified in the following paragraphs in the manner described in those paragraphs.

2. These Regulations amend the Infant Formula and Follow-on Formula Regulations 1995 (S.I. 1995/77, as amended, “the 1995 Regulations”) in so far as they apply in relation to England to provide for the execution and enforcement of Commission Regulation (EC) No. 1609/2006 authorising the placing on the market of infant formula based on hydrolysates of whey protein derived from cows’ milk protein for a two-year period (OJ No. L299, 28.10.2006, p.9). They amend the 1995 Regulations to provide that a person shall not be considered to have contravened or failed to comply with the provisions contained in regulation 2 of the 1995 Regulations where the sale which would otherwise have constituted a contravention of or a failure to comply with those provisions and thus an offence is the sale of an infant formula falling within the derogation set out in Commission Regulation (EC) No. 1609/2006 (*regulation 2(2)*).

3. These Regulations amend the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997 (S.I. 1997/2182, as amended, “the 1997 Regulations”) in so far as they apply in relation to England to implement Commission Directive 2007/29/EC amending Directive 96/8/EC as regards labelling, advertising or presenting foods intended for use in energy-restricted diets for weight reduction (OJ No. L139, 31.5.2007, p.22). They amend the 1997 Regulations to provide for the removal of the prohibition on selling certain foods where the labelling, advertising or presentation of that food refers to a reduction in the sense of hunger or an increase in the sense of satiety (*regulation 3(2)*).

4. These Regulations amend the Medical Food (England) Regulations 2000 (S.I. 2000/845, as amended, “the 2000 Regulations”) to implement Commission Directive 2006/82/EC adapting Directive 91/321/EEC on infant formulae and follow-on formulae and Directive 1999/21/EC on dietary food for special medical purposes, by reason of the accession of Bulgaria and Romania (OJ No. L362, 20.12.2006, p.94). They amend the 2000 Regulations by substituting a revised definition of “the Directive” (to take account of Commission Directive 2006/82/EC) for the existing definition of “the Directive” in regulation 2 (interpretation) (*regulation 4(2)*).

5. These Regulations amend the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (England) Regulations 2002 (S.I. 2002/1817, as amended, “the 2002 Regulations”) to implement Commission Directive 2007/26/EC amending Directive 2004/6/EC to extend its period of application (OJ No. L118, 8.5.2007, p.5). They amend the 2002 Regulations to provide that certain restrictions contained in those Regulations shall not apply to certain substances until 1st January 2010 (*regulation 5(2)*).

6. These Regulations amend the Processed Cereal-based Foods and Baby Foods for Infants and Young Children (England) Regulations 2003 (S.I. 2003/3207, as amended, “the 2003 Regulations”) to implement Commission Directive 2006/125/EC on processed cereal-based foods and baby foods for infants and young children (OJ No. L339, 6.12.2006, p.16). They amend the 2003 Regulations by substituting a revised definition of the “the Directive” (so that it now refers to Commission Directive 2006/125/EC) for the existing definition of “the Directive” in paragraph (1) of regulation 2 (interpretation) (*regulation 6(2)*).

7. 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 WC2B 6NH and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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