

1999 No. 747

FOOD

The Food Labelling (Amendment) Regulations 1999

<i>Made - - - -</i>	<i>17th March 1999</i>
<i>Laid before Parliament</i>	<i>18th March 1999</i>
<i>Coming into force</i>	<i>19th March 1999</i>

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Health and the Secretary of State for Wales, acting jointly, in relation to England and Wales, and the Secretary of State for Scotland in relation to Scotland, in exercise of the powers conferred on them by sections 6(4), 16(1)(e) and (f), 17, 18, 26(1) and (3) and 48(1) of the Food Safety Act 1990^(a) and of all other powers enabling them in that behalf, hereby make the following Regulations, after consultation in accordance with section 48(4) of that Act with such organisations as appear to them to be representative of interests likely to be substantially affected by the Regulations:

Title and commencement

1. These Regulations may be cited as the Food Labelling (Amendment) Regulations 1999 and shall come into force on 19th March 1999.

Amendment of the Food Labelling Regulations 1996

2. The Food Labelling Regulations 1996^(b) shall be amended in accordance with regulations 3 to 12 of these Regulations.

3. In regulation 2(1) (interpretation)–

(a) there shall be inserted after the definition of “food for a particular nutritional use” the following definition–

“ “the GMO particulars” means the additional specific labelling particulars required by Article 2(3) of Regulation 1139/98;”;

(b) there shall be inserted after the definition of “recommended daily allowance” the following definition–

“ “Regulation 1139/98” means Council Regulation (EC) No. 1139/98^(c) (as corrected^(d)) concerning the compulsory indication, on the labelling of certain foodstuffs produced from genetically modified organisms, of particulars other than those provided for in Directive 79/112/EEC;”.

4. In regulation 3(1)(iv) (exemptions), there shall be substituted for the words “and Directive 94/54” the words “, Directive 94/54 and Regulation 1139/98”.

^(a) 1990 c. 16; “the Ministers” is defined in section 4(1) of the Act; section 6(4)(a) of the Act was amended by the Deregulation and Contracting Out Act 1994 (c. 40), Schedule 9, paragraph 6.

^(b) S.I. 1996/1499; the relevant amending instrument is S.I. 1998/1398.

^(c) OJ No. L159, 3.6.98, p.4.

^(d) OJ No. L190, 4.7.98, p.86.

5. In regulation 26 (small packages and certain indelibly marked bottles)–
 - (a) in paragraph (1) there shall be substituted for the words from “by virtue of” to the end the words “–
 - (a) by virtue of these Regulations be marked or labelled with–
 - (i) any of the particulars specified in regulation 5 except the name of the food and, unless the food is not required to be marked or labelled with such an indication, the appropriate durability indication, or
 - (ii) any of the particulars specified in regulations 33 and 34, where but for this regulation they would otherwise be required, or
 - (b) be marked or labelled with the GMO particulars, where but for this regulation they would otherwise be required.”;
 - (b) in paragraph (3) there shall be substituted for the words “particulars specified in regulations 32, 33 and 34” the words “other particulars mentioned in paragraph (3A) of this regulation”;
 - (c) after paragraph (3) there shall be inserted the following paragraph–

“(3A) The other particulars for the purposes of paragraph (3) of this regulation are those specified in regulations 32, 33 and 34 and, in the case of any food to which paragraph (1) of this regulation applies, the GMO particulars.”.
6. In regulation 35 (general requirement as to manner of marking or labelling), there shall be inserted after the words “by these Regulations” the words “or by Regulation 1139/98”.
7. In regulation 36 (manner of marking or labelling in the case of food to which regulation 23 or 27 applies)–
 - (a) in paragraph (1)–
 - (i) there shall be inserted after the words “by these Regulations” the words “or by Regulation 1139/98”;
 - (ii) there shall be inserted after the words “paragraph (2)” the words “or (4A)”;
 - (b) in paragraph (2) there shall be inserted after the words “use of alternative labelling” the words “relating to irradiation”;
 - (c) there shall be inserted after paragraph (4) the following paragraphs–

“(4A) In any case where food–

 - (a) is food to which the labelling requirements of Regulation 1139/98 apply,
 - (b) is–
 - (i) not prepacked, or
 - (ii) prepacked for direct sale, and
 - (c) is sold to the ultimate consumer at appropriate premises,

use of alternative labelling in place of the GMO particulars shall not alone be treated as a contravention of those labelling requirements and for this purpose alternative labelling is used where, instead of the particulars referred to in Article 2(3) of that Regulation appearing in the manner specified in paragraph (1)(a) or (b) of this regulation, alternative particulars are displayed in accordance with paragraph (4B) of this regulation.

(4B) Alternative particulars are displayed in accordance with this paragraph in relation to any food referred to in paragraph (4A) of this regulation if there appears on a menu, notice, ticket or label which is readily discernible by an intending purchaser and which is located at the place at the premises where he chooses that food, indications to the effect that some of the food sold at those premises contains ingredients produced

from genetically modified soya beans or maize, or both, as the case may be, and that further information is available from the staff.

(4C) In paragraph (4A)(c) of this regulation “appropriate premises” means premises where—

- (a) the staff provide clarification at the request of an intending purchaser as to whether particular food sold at those premises, other than food falling within Article 1(2) or 2(2) of Regulation 1139/98, is produced in whole or in part from a genetically modified product referred to in Article 1(1) of that Regulation, and
- (b) there is an established procedure at those premises for keeping staff informed of that information.”.

8. In regulation 38(1) (intelligibility of marking or labelling), there shall be inserted after the words “by these Regulations” the words “or by Regulation 1139/98”.

9. In regulation 44(1) (offences and penalties), there shall be inserted after sub-paragraph (e) the word “or” and the following sub-paragraph—

“(f) sells any food to which the labelling requirements of Regulation 1139/98 apply which is not marked or labelled with the GMO particulars, except in the case of any food to which regulation 36(4A) applies and in respect of which alternative particulars are displayed in accordance with regulation 36(4B),”.

10. In regulation 47(b) (defence in relation to exports), there shall be substituted for the words “and Directive 94/54” the words “, Directive 94/54 and Regulation 1139/98”.

11. There shall be substituted for regulation 48 (application of various sections of the Food Safety Act 1990) the following section—

“Application of various provisions of the Act

48.—(1) The following provisions of the Act shall apply for the purposes of these Regulations and, unless the context otherwise requires, any reference in those provisions to the Act or Part thereof shall be construed for the purposes of these Regulations as a reference to these Regulations—

- section 2 (extended meaning of “sale” etc.);
- section 3 (presumption that food is intended for human consumption);
- section 20 (offences due to fault of another person);
- section 21 (defence of due diligence) as it applies for the purposes of section 8, 14 or 15;
- section 22 (defence of publication in the course of a business);
- section 30(8) (which relates to documentary evidence);
- section 33 (obstruction etc. of officers);
- section 36 (offences by bodies corporate);
- section 44 (protection of officers acting in good faith).

(2) In the application of section 32 of the Act (powers of entry) for the purposes of these Regulations, the reference in subsection (1)(a) to the Act shall be construed as including a reference to Regulation 1139/98.

(3) The penalty provisions in section 35(1) of the Act (punishment of offences) shall apply in relation to an offence under section 33(1) of the Act as applied by these Regulations, and the penalty provisions in section 35(2) and (3) of the Act shall apply in relation to an offence under 33(2) of the Act as applied by these Regulations.”.

12. In regulation 50 (transitional provision) there shall be inserted at the end the following paragraphs—

“(5) The following provisions of these Regulations shall not apply in relation to the sale of any relevant food before 19th September 1999—

- (a) regulation 44(1)(a), as read with regulation 36 or 38, in relation to the particulars with which food is required to be marked or labelled by Regulation 1139/98, and
 - (b) regulation 44(1)(f).
- (6) In any proceedings for an offence in relation to any relevant food under—
- (a) regulation 44(1)(a), as read with regulation 36 or 38, in relation to the particulars with which food is required to be marked or labelled by Regulation 1139/98, or
 - (b) regulation 44(1)(f),
- it shall be a defence to prove that the food was prepared using an ingredient which was on sale before 1st September 1998.
- (7) For the purposes of paragraphs (5) and (6) of this regulation, “relevant food” means food which—
- (a) is sold to the ultimate consumer, and
 - (b) is—
 - (i) not prepacked, or
 - (ii) prepacked for direct sale.”.

17th March 1999

Jeff Rooker
Minister of State,
Ministry of Agriculture, Fisheries and Food

17th March 1999

Frank Dobson
Secretary of State for Health

Signed by authority of the Secretary of State for Wales:

17th March 1999

Jon Owen Jones
Parliamentary Under Secretary of State,
Welsh Office

17th March 1999

Calum MacDonald
Parliamentary Under Secretary of State,
Scottish Office

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply to Great Britain, amend the Food Labelling Regulations 1996, as amended. These Regulations provide for the enforcement of Council Regulation (EC) No. 1139/98 concerning the compulsory indication, on the labelling of certain foodstuffs produced from genetically modified organisms, of particulars other than those provided for in Directive 79/112/EEC (regulations 3 and 9).

The products concerned are those which are to be delivered as such to the final consumer, having been produced in whole or in part from genetically modified soya beans or genetically modified maize (Article 1 of Regulation 1139/98 refers). There are transitional provisions in Article 4 of that Regulation in respect of products which are already on the market or which are labelled in accordance with Commission Regulation (EC) No. 1813/97 (OJ No. L257, 20.9.97, p.7).

Regulation 1139/98 was made pursuant to Article 4(2) of Council Directive 79/112/EEC on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs (OJ No. L33, 8.2.79, p.1). Pursuant to Article 11 of that Directive, the Regulations—

- (a) contain exemptions from the need to be labelled with the particulars required by Regulation 1139/98 in the case of small packages and certain indelibly marked glass bottles, and include a similar exemption in respect of the particulars specified in regulations 33 and 34 of the principal Regulations (relating to foods packaged in certain gases and foods containing sweeteners or added sugars) (regulation 5); and
- (b) make provision as to the manner of marking or labelling in the case of the particulars required by Regulation 1139/98 (regulations 6, 7 and 8).

Further to Article 12 of Directive 79/112/EEC, the Regulations—

- (a) allow alternative labelling arrangements instead of the particulars required by Regulation 1139/98 in the case of sales to the ultimate consumer by appropriate premises of food which is prepacked for direct sale or not prepacked (regulation 7); and
- (b) contain transitional provisions in respect of sales of such food to the ultimate consumer (regulation 12).

These Regulations also make some consequential amendments and some technical amendments in respect of the application of specified provisions of the Food Safety Act 1990 (regulations 4, 10 and 11).

A Regulatory Impact Assessment has been prepared and placed in the Library of each House of Parliament. Copies may be obtained from the Additives and Novel Foods Division of the Ministry of Agriculture, Fisheries and Food, Room 239c, Ergon House, 17 Smith Square, London SW1P 3JR.

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