

2010 No. 363 (W.45)

FOOD, WALES

**The Food for Particular Nutritional
Uses (Miscellaneous Amendments)
(Wales) Regulations 2010**

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to Wales, amend the Food Labelling Regulations 1996 (S.I. 1996/1499, as already amended) and the Notification of Marketing of Food for Particular Nutritional Uses (Wales) Regulations 2007 (S.I. 2007/1040 (W.100)) in order to reflect the repeal and replacement of Council Directive 89/398/EC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses (OJ No. L186, 30.6.1989, p.27) by Directive 2009/39/EC of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses (OJ No. L124, 20.5.2009, p.21).

2. These Regulations amend the Food Labelling Regulations 1996 (which extend to the whole of Great Britain), in so far as they apply in relation to Wales, by omitting the definition of “Directive 89/398” from regulation 2(1) and inserting a definition of “Directive 2009/39” into that provision and substituting a reference to “Directive 2009/39” for a reference to “Directive 89/398” in regulation 3(1)(iv) (*regulation 2*).

3. These Regulations amend the Notification of Marketing of Food for Particular Nutritional Uses (Wales) Regulations 2007 by substituting a revised definition of “the Directive” for the existing definition of “the Directive” in regulation 2(1) so that it refers to Directive 2009/39/EC instead of Directive 89/398/EEC and substituting references to specified provisions of Directive 2009/39/EC for the existing references to specified provisions of Directive 89/398/EEC in regulations 3 and 4 (*regulation 3*).

4. A regulatory impact assessment has not been prepared for this instrument as it is not anticipated that the implementation of these Regulations will impose any costs on consumers, businesses or enforcement authorities.

2010 No.363 (W. 45)

FOOD, WALES

**The Food for Particular Nutritional
Uses (Miscellaneous Amendments)
(Wales) Regulations 2010**

Made *17 February 2010*

Laid before the National Assembly for Wales

19 February 2010

Coming into force *15 March 2010*

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 17(1), 26(1)(a) and 48(1) of the Food Safety Act 1990(1), as read with paragraph 1A of Schedule 2 to the European Communities Act 1972(2).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for certain references to Directive 2009/39 of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses(3) in specified statutory instruments to be construed as references to that Directive as amended from time to time.

In accordance with section 48(4A) of the Food Safety Act 1990, the Welsh Ministers have had regard to relevant advice given by the Food Standards Agency.

-
- (1) 1990 c.16. Functions 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 Food Standards Act 1999 (1999 c.28) and thereafter transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (2006 c.32).
- (2) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51).
- (3) OJ No. L124, 20.5.2009, p.21.

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, application and commencement

1.—(1) The title of these Regulations is The Food for Particular Nutritional Uses (Miscellaneous Amendments) (Wales) Regulations 2010.

(2) These Regulations apply in relation to Wales and come into force on 15 March 2010.

Amendment of the Food Labelling Regulations 1996

2.—(1) The Food Labelling Regulations 1996⁽²⁾ are amended in accordance with the following paragraphs in so far as they apply in relation to Wales.

(2) In paragraph (1) of regulation 2 (interpretation)—

- (a) omit the definition of “Directive 89/398”⁽³⁾;
- (b) immediately after the definition of “Directive 2000/13” insert the following definition—

““Directive 2009/39” means Directive 2009/39/EC of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses⁽⁴⁾ as amended from time to time;”.

(3) In regulation 3 (exemptions), for sub-paragraph (iv) of paragraph (1) substitute the following sub-paragraph—

“(iv) where applicable, the requirements of Directive 87/250, Directive 90/496, Directive 94/54, Directive

-
- (1) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p.14).
 - (2) S.I. 1996/1499, amended by S.I. 1998/1398, S.I. 1999/747, S.I. 2001/1232 (W.66), S.I. 2001/1440 (W.102), S.I. 2003/832 (W.104), S.I. 2004/249 (W.26), S.I. 2004/1396 (W.141), S.I. 2004/2558 (W.229), S.I. 2004/3022 (W.261), S.I. 2005/1309 (W.91), S.I. 2007/2611 (W.222), S.I. 2008/1268 (W.128) and S.I. 2009/2705 (W.224); there are other amending instruments but none is relevant.
 - (3) Council Directive 89/398/EEC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses (OJ No. L186, 30.6.1989, p.27).
 - (4) OJ No. L124, 20.5.2009, p.21.

99/2 and Directive 2009/39 are met in respect of that food.”.

Amendment of the Notification of Marketing of Food for Particular Nutritional Uses (Wales) Regulations 2007

3.—(1) The Notification of Marketing of Food for Particular Nutritional Uses (Wales) Regulations 2007(1) are amended in accordance with the following paragraphs.

(2) In paragraph (1) of regulation 2 (interpretation), for the definition of “the Directive” (“*y Gyfarwyddeb*”) substitute the following definition—

““the Directive” (“*y Gyfarwyddeb*”) means Directive 2009/39 of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses as amended from time to time;”.

(3) In regulation 3 (restriction on sale)—

(a) for paragraph (1) substitute the following paragraph—

“(1) No person who, in respect of a PNU food product of a particular type—

(a) is a manufacturer or an importer referred to in Article 11 of the Directive, but

(b) has failed to comply with—

(i) a requirement to notify the competent authority, as referred to in sub-paragraph (a) or (b) of paragraph (1) of that Article, or

(ii) a requirement to produce anything to the competent authority, as referred to in sub-paragraph (c) of paragraph (1) of that Article,

shall sell a PNU food product of that type.”; and

(b) in sub-paragraph (b) of paragraph (2) for “Article 9” substitute “Article 11”.

(4) In paragraph (1) of regulation 4 (declaration), for “Article 1(2)” substitute “Article 1(2) and (3)”.

(1) S.I. 2007/1040 (W.100).

Gwenda Thomas

Deputy Ministers for Social Services, under authority
of the Minister for Health and Social Services, one of
the Welsh Ministers.

17 February 2010