
STATUTORY RULES OF NORTHERN IRELAND

2010 No. 414

FOOD

The Flavourings in Food Regulations (Northern Ireland) 2010

Made - - - - 13th December 2010

Coming into operation 20th January 2011

The Department of Health, Social Services and Public Safety⁽¹⁾ makes the following Regulations in exercise of the powers conferred by Articles 15(1)(a), (e) and (f), 16(2), 25(1)(a) and (b) and (3) and 47(2) of the Food Safety (Northern Ireland) Order 1991⁽²⁾.

In accordance with Article 47(3A) of that Order, it 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⁽³⁾, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Flavourings in Food Regulations (Northern Ireland) 2010 and come into operation on 20th January 2011.

Interpretation

2.—(1) In these Regulations —

“authorised officer” means any person who is authorised in writing, either generally or specifically, by a district council (whether or not that person is an officer of that district council) to act in matters arising under these Regulations;

“the EU Regulation” means Regulation (EC) No.1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No. 1601/91, Regulations (EC) No. 2232/96 and (EC) No. 110/2008 and Directive 2000/13/EC⁽⁴⁾;

“the Order” means the Food Safety (Northern Ireland) Order 1991.

(1) Formerly the Department of Health and Social Services; see S.I. 1999/283 (N.I.1) Article 3(6)
(2) S.I. 1991/762 (N.I.7) as amended by S.I. 1996/1663 (N.I.12), paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c.28 and S.R. 2004 Nos. 482 and 505
(3) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Commission 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: Adaptation to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p.14)
(4) OJ No. L354, 31.12.2008, p.34

(2) Any other expression used in these Regulations and in the EU Regulation has the same meaning in these Regulations as it bears in the EU Regulation.

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

Offences and penalties

3.—(1) A person who contravenes or fails to comply with any of the EU provisions specified in paragraph (2) as read with the transitional arrangements contained in Article 30 is guilty of an offence.

(2) The EU provisions are —

- (a) Article 4 (general conditions of use of flavourings or food ingredients with flavouring properties);
- (b) Article 5 (prohibition of non-compliant flavourings or non-compliant food);
- (c) Article 6(1) and (2) (restrictions on the presence of certain substances);
- (d) Article 7 (restrictions on the use of certain source materials);
- (e) Article 10 (restriction relating to the Community list of flavourings and source materials);
- (f) Article 14(1) (labelling of flavourings not intended for sale to the final consumer);
- (g) Article 17 (labelling of flavourings intended for sale to the final consumer); and
- (h) Article 19(2) and (3) (reporting obligations on food business operators).

(3) Anyone convicted of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Enforcement authorities

4. It is the duty of each district council within its district to execute and enforce these Regulations and the EU Regulation.

Application of various Articles of the Food Safety (Northern Ireland) Order 1991

5.—(1) The following provisions of the Order apply for the purposes of these Regulations with the modification that any reference in those provisions to the Order or Part of it is to be construed as a reference to these Regulations —

- (a) Article 19 (offences due to fault of another person);
- (b) Article 20 (defence of due diligence) with the modification that —
 - (i) paragraphs (2) to (4) apply in relation to an offence under regulation 3(1) of contravening any of the EU provisions specified in regulation 3(2)(a) to (g) as they apply in relation to an offence under Article 13 or 14, and
 - (ii) in paragraph (4) the references to “sale” are deemed to include references to “placing on the market”;
- (c) Article 30(8) (which relates to documentary evidence);
- (d) Article 36(1) (punishment of offences), in so far as it relates to offences under Article 34(1) as applied by paragraph (3)(b);
- (e) Articles 36(2) and (3), in so far as it relates to offences under Article 34(2) as applied by paragraph (3)(c).

(2) In the application of Article 33 of the Order (powers of entry) for the purposes of these Regulations, the references in Article 33(1) to the Order are to be construed as including references to the EU Regulation.

(3) The following provisions of the Order apply for the purposes of these Regulations with the modification that any reference in those provisions to the Order is to be construed as including a reference to the EU Regulation and these Regulations —

- (a) Article 4 (presumption that food is intended for human consumption) with the modification that the references to “sold” and “sale” are deemed to include references to “placed on the market” and “placing on the market” respectively;
- (b) Article 34(1) (obstruction etc. of officers);
- (c) Article 34(2), with the modification that the reference to “any such requirement as is mentioned in paragraph (1)(b)” is deemed to be a reference to any such requirement as is mentioned in Article 34(1)(b) as applied by sub-paragraph (b).

(4) Article 35 of the Order (time limit for prosecutions) applies to offences under regulation 3 as it applies to offences punishable under Article 36(2) of the Order.

Condemnation of Food

6. Where any food is certified by a food analyst as being food which it is an offence under these Regulations to place on the market, that food may be treated for the purposes of Article 8 of the Order (under which a food may be seized and destroyed under an order of a justice of the peace) as failing to comply with food safety requirements.

Amendments to the Food Labelling Regulations (Northern Ireland) 1996

7.—(1) The Food Labelling Regulations (Northern Ireland) 1996⁽⁵⁾ are amended in accordance with paragraphs (2) and (3).

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

(a) for the definition of “the additives regulations” substitute —

““the additives regulations” means the Food Additives Regulations (Northern Ireland) 2009, Regulation (EC) No. 1333/2008 of the European Parliament and of the Council on food additives and Regulation 1334/2008 on food flavourings;”;

(b) for the definition of “flavouring” when used as a noun substitute —

“the noun “flavouring” bears the same meaning as “flavourings” as defined in Article 3(2)(a) of Regulation 1334/2008 on food flavourings;”;

(c) the definitions of “flavouring preparation”, “flavouring substance”, “process flavouring” and “smoke flavouring” are omitted; and

(d) after the definition of “recommended daily allowance” insert —

““Regulation 1334/2008 on food flavourings” means Regulation (EC) No. 1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No. 1601/91, Regulations (EC) No. 2232/96 and (EC) No. 110/2008 and Directive 2000/13/EC;”.

(3) In regulation 14 (names of ingredients) —

(a) for paragraph (5) substitute —

⁽⁵⁾ S.R. 1996 No. 383. Regulation 14(5) was previously amended by S.R. 2003 No. 448 and S.R. 2004 No. 469. Regulation 34B was amended by S.R. 2005 No. 396 and S.R. 2008 No. 198

“(5) Subject to paragraph (5A) and to regulation 34B, where an ingredient being a flavouring is added to or used in a food it shall be identified by either —

- (a) the word “flavouring” or, where more than one such ingredient is used, “flavourings”, or
- (b) a more specific name or description of the flavouring; or
- (c) the expression “smoke flavouring(s)” or “smoke flavouring(s) produced from (*insert name of food or food category or source*)” if the flavouring component contains smoke flavouring as defined by Article 3(2)(f) of Regulation 1334/2008 on food flavourings and imparts a smoky flavour to the food.”;

(b) for paragraph (6) substitute —

“(6) The word “natural” to describe an ingredient being a flavouring may only be used in accordance with Article 16 of Regulation 1334/2008 on food flavourings as read with Article 30 of that Regulation.”; and

(c) paragraphs (7) and (8) are omitted.

Revocations

8. The following Regulations or parts thereof are revoked —

- (a) The Flavourings in Food Regulations (Northern Ireland) 1992(6);
- (b) The Flavourings in Food (Amendment) Regulations (Northern Ireland) 1994(7);
- (c) Regulation 49(12) of the Food Labelling Regulations (Northern Ireland) 1996.

Sealed with the official seal of the Department of Health, Social Services and Public Safety on 13th December 2010.



Michael McBride
A senior officer of the Department of Health,
Social Services and Public Safety

(6) S.R. 1992 No. 416
(7) S.R. 1994 No. 270

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the execution and enforcement of Regulation (EC) No.1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No. 1601/91, Regulations (EC) No.2232/96 and (EC) No. 110/2008 and Directive 2000/13/EC (OJ No. L354, 31.12.2008, p.34) (“the EU Regulation”).

These Regulations provide that it is an offence to contravene the requirements of the EU Regulation by —

- (a) using flavourings or food ingredients with flavouring properties in or on foods if they pose a risk to the health of consumers or if their use misleads consumers (*regulation 3(2)(a)*);
- (b) placing on the market any flavouring or food ingredient with flavouring properties or food in which they are present if their use does not comply with the EU Regulation (*regulation 3(2)(b)*);
- (c) adding certain proscribed substances to food (*regulation 3(2)(c)*);
- (d) using certain proscribed source materials for the production of flavourings or food ingredients with flavouring properties, or using certain specified source materials other than in accordance with prescribed conditions (*regulation 3(2)(d)*);
- (e) placing on the market or using certain specified flavourings or source materials unless they are included in the authorised EU list (*regulation 3(2)(e)*);
- (f) labelling flavourings not intended for sale to the final consumer other than in accordance with the conditions set out in the EU Regulation (*regulation 3(2)(f)*);
- (g) labelling flavourings that are intended for sale to the final consumer other than in accordance with the conditions set out in the EU Regulation (*regulation 3(2)(g)*); and
- (h) failing to provide certain specified information when required (*regulation 3(2)(h)*).

These Regulations also —

- (a) designate the authorities having the duty to enforce these Regulations and the EU Regulation (*regulation 4*);
- (b) apply certain provisions of the Food Safety (Northern Ireland) Order 1991 for the purposes of these Regulations (*regulation 5*);
- (c) provide that where food does not comply with the EU Regulation such that it would be an offence under these Regulations to place it on the market, it is to be treated as failing to comply with food safety requirements for the purposes of seizure and destruction under Article 8 of the Food Safety (Northern Ireland) Order 1991 (*regulation 6*); and
- (d) make amendments to the Food Labelling Regulations (Northern Ireland) 1996 (*regulation 7*).