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# Statutory Rule 1998 No. 264

## **Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 1998**

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STATUTORY RULES OF NORTHERN IRELAND

**1998 No. 264**

**FOOD**

Plastic Materials and Articles in Contact with Food Regulations  
(Northern Ireland) 1998

*Made*

*27th July 1998*

*Coming into operation*

*14th September 1998*

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The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by Articles 15(2), 16(1), 25(1)(a) and (3), 32 and 47(2) of the Food Safety (Northern Ireland) Order 1991[1] and, being a designated Department[2] for the purposes of section 2(2) of the European Communities Act 1972[3] in relation to materials and articles in contact with food or drink or intended for such contact, in exercise of the powers conferred on it by the said section 2(2) and of all other powers enabling it in that behalf and after consultation in accordance with Article 47(3) of the said Order with such organisations as appear to it to be representative of interests likely to be substantially affected by these Regulations (in so far as the Regulations are made in exercise of the said Order), hereby makes the following Regulations:

### **Citation and commencement**

1. These Regulations may be cited as the Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 1998 and shall come into operation on 14th September 1998.

### **Interpretation**

2. - (1) In these Regulations -

"additive" means a substance, other than one which directly influences the formation of polymers which is -  
(a) incorporated into a plastic material or article to achieve a technical effect in the finished product and is intended to be present in the finished product; or

(b) used to provide a suitable medium in which polymerisation occurs;

"capable" means capable as established under regulation 6;  
"Council Directive 82/711" means Council Directive 82/711/EEC laying down the basic rules necessary for testing migration of the constituents of plastic materials and articles intended to come into contact with foodstuffs[4], as amended by Commission Directives 93/8/EEC[5] and 97/48/EC[6];

"the Directive" means Commission Directive (EEC) No. 90/128 relating to plastic materials and articles intended to come into contact with foodstuffs[7] (as corrected) and as amended by Commission Directives 92/39/EEC, 93/9/EEC, 95/3/EC and 96/11/EC[8];

"EEA Agreement" means the Agreement on the European Economic Area[9] signed at Oporto on 2nd May 1992 as adjusted by the Protocol[10] signed at Brussels on 17th March 1993;

"EEA State" means a State (other than the United Kingdom) which is a contracting party to the EEA Agreement;

"food" has the same meaning as it has in Article 15(5) of the Order;

"good technical quality" means good technical quality as regards the purity criteria;

"import" means import in the course of a business;

"monomer" means anything which is included for the purposes of the Directive among monomers and other starting substances;

"the Order" means the Food Safety (Northern Ireland) Order 1991;

"plastic material or article" means anything which for the purposes of the Directive is included among those plastic materials and articles and parts thereof to which the Directive applies;

"sell" includes offer or expose for sale or have in possession for sale;

### **Method of testing capability of transferring constituents**

**6. - (1)** For the purposes of these Regulations, a plastic material or article shall be treated as being capable of transferring constituents to food with which it may come into contact to the extent that it is established for those purposes -

(a) in any case other than one to which sub-paragraph (b) relates, by the verification methods specified in Schedules 3 and 4;

(b) in any case where the extent to which vinyl chloride, as identified in Section A of Part I of Schedule 1, is capable of such transfer falls to be established, by the method referred to in regulation 14(2) of the 1987 Regulations.

(2) In Schedules 3 and 4, references to migration or release of a substance shall be construed as references to the transfer of constituents to the simulant representing the food or, as the case may be, food with which it may come into contact.

(3) In paragraph (1)(a) analytical tolerances, as referred to in paragraph 8 of Schedule 3, shall be treated as included among verification methods.

### **Transfer of constituents**

**7. - (1)** No plastic material or article shall be capable of transferring its constituents to food with which it may come into contact in quantities exceeding the appropriate limit.

(2) For the purposes of this regulation a plastic material or article shall not be considered capable of transferring its constituents to food with which it may come into contact, in quantities exceeding the appropriate limit, if the only food which that plastic material or article may come into contact with is food to which paragraph (3) applies.

(3) This paragraph applies to food which is specified in the Table to Part IV of Schedule 4 where there is no "X" placed anywhere in the group of columns headed "Simulants to be used" opposite that food.

(4) For the purposes of this regulation the appropriate limit is -

(a) an overall migration limit of 60 milligrams of constituents released per kilogram of food in the case of any plastic material or article comprising -

(i) an article which is a container or is comparable to a container or which can be filled, with a capacity of not less than 500 millilitres and not more than 10 litres;

(ii) an article which can be filled and for which it is impracticable

to estimate the surface area in contact with food;

(iii) a cap, gasket, stopper or similar device for sealing, and

(b) in the case of any other plastic material or article, an overall migration limit of 10 milligrams per square decimetre of the surface area of the plastic material or article.

(5) In any proceedings for an offence under these Regulations an element of which is that a plastic material or article does not comply with this regulation the defences in paragraph 6(2) and 7(2) of Schedule 3 shall be available as specified therein.

### **Labelling**

**8.** - (1) Subject to paragraph (2), at marketing stages other than the retail stage a person who is in possession of any plastic material or article which is intended to come into contact with food shall ensure that that plastic material or article is accompanied by a written declaration attesting that it complies with the legislation applicable to it.

(2) Paragraph (1) shall not apply to a person in possession of any plastic material or article which by its nature is clearly intended to come into contact with food.

### **Enforcement**

**9.** Each district council shall enforce and execute these Regulations in its own district.

### **Offences**

**10.** - (1) Any person who contravenes regulation 3, 4(1), 5(1) or 8 shall be guilty of an offence.

(2) Any person who -

(a) intentionally obstructs any person acting in the execution of these Regulations, or

(b) without reasonable cause, fails to give to any person acting in the execution of these Regulations any assistance or information which that person may reasonably require of him for the performance of his functions under these Regulations,

shall be guilty of an offence.

(3) Nothing in paragraph (2)(b) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

(4) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (2)(b) -

(a) furnishes information which he knows to be false or misleading in a material particular, or

(b) recklessly furnishes information which is false or misleading in a material particular,

shall be guilty of an offence.

(5) Where the commission by any person of an offence under these Regulations is due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first mentioned person.

(6) In any proceedings for an offence under these Regulations it shall, subject to paragraph (10), be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(7) Without prejudice to the generality of paragraph (6), a person charged with an offence under these Regulations who neither -

(a) prepared the plastic material or article in respect of which the offence is alleged to have been committed, nor

(b) imported it into Northern Ireland,

shall be taken to have established the defence provided by that paragraph if he satisfies the requirements of paragraph (8) or (9).

(8) A person satisfies the requirements of this paragraph if he proves -

(a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;

(b) that he carried out all such checks of the plastic material or article in question as were reasonable in all the circumstances, or that it was reasonable in all the circumstances for him to rely on checks carried out by the person who supplied the plastic material or article to him; and

(c) that he did not know and had no reason to suspect at the time of the commission of the alleged offence that his act or omission would amount to an offence under these Regulations.

(9) A person satisfies the requirements of this paragraph if the offence is one of sale and he proves -

(a) that the commission of the offence was due to an act or default of another person who was not under his control, or to reliance on information supplied by such a person;

(b) that the sale of which alleged offence consisted was not a sale under his name or mark; and

(c) that he did not know, and could not reasonably have been expected to know, at the time of the commission of the alleged offence that his act or omission would amount to an offence under these Regulations.

(10) If in any case the defence provided by paragraph (6) involves the allegation that the commission of the offence was due to an act or default of another person, or to reliance on information supplied by another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless -

(a) at least seven clear days before the hearing, and

(b) where he has previously appeared before a court in connection with the alleged offence, within one month of his first such appearance,

he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession, and in this paragraph any reference to appearing before a court shall be construed as including a reference to being brought before a court.

(11) Any person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months or to both and on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or both.

(12) No prosecution for an offence under these Regulations shall be begun after the expiry of -

(a) three years from the commission of the offence; or

(b) one year from its discovery by the prosecutor,

whichever is earlier.

### **Presumption as to food with which a plastic material or article is to come into contact**

**11.** In establishing which descriptions of food a plastic material or article may come into contact with it shall be assumed for the purposes of these Regulations, until the contrary is proved, that, if particulars are shown in relation to that plastic material or article in accordance with the 1987 Regulations, those particulars are accurate and that, unless the particulars so indicate, there are no restrictions on the intended conditions of contact.

### **Application of other provisions**

**12.** - (1) The following provisions of the 1987 Regulations shall apply in

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relation to plastic materials or articles as they apply to materials and articles for the purposes of those Regulations, as if those provisions formed part of these Regulations -

- (a) regulation 12 (powers of authorised officers);
- (b) regulation 13 (analysis, examination and testing);
- (c) regulation 16 (confidentiality);
- (d) regulation 19 (evidence of analysis); and
- (e) regulation 20 (analysis by Government Chemist).

(2) Article 4(d) of the Order (relating to the presumption of intention for human consumption) shall apply for the purposes of these Regulations as it applies for the purposes of the Order.

(3) Articles 29 and 30 of the Order (which deal with procurement and analysis of samples) shall, in so far as they relate to plastic materials or articles, be modified to the extent necessary to avoid restricting the scope of paragraph 1(a), (b), (d) and (e).

#### **Amendment**

**13.** In the Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991[[15](#)], in Schedule 1 (provisions to which those regulations do not apply), for the title and reference of the 1993 Regulations there shall be substituted the title and reference of these Regulations.

#### **Revocations**

**14.** The 1993 Regulations, the Plastic Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 1995[[16](#)], the Plastic Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 1996[[17](#)] and the Plastic Materials and Articles in Contact with Food (Amendment No. 2) Regulations (Northern Ireland) 1996[[18](#)] are hereby revoked.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on

***L.S.***

*J. R. Kearney*  
Assistant Secretary

27th July 1998.

(SCHEDULES OMITTED)

These Regulations come into operation on 14th September 1998.

These Regulations implement -

- (a) Council Directive (EEC) 82/711 (O.J. No. L297, 23.10.82, p. 26), as amended by Commission Directives 93/8/EEC (O.J. No. L90, 14.4.93, p. 22) and 97/48/EC (O.J. No. L222, 12.8.97, p. 10), laying down the basic rules necessary for testing migration of the constituents of plastic materials and articles intended to come into contact with foodstuffs;
- (b) Council Directive (EEC) 85/572 (O.J. No. L372, 30.12.85, p. 14) laying down the list of simulants to be used for testing migration of constituents of plastic materials and articles intended to come into contact with foodstuffs; and
- (c) Commission Directive (EEC) 90/128 (O.J. No. L75, 21.3.90, p. 19, to be read with the corrigendum in O.J. No. L349, 13.12.90, p. 26), as amended by Commission Directives (EEC) 92/39 (O.J. No. L168, 23.6.92, p. 21), 93/9 (O.J. No. L90, 14.4.93, p. 26), 95/3/EEC (O.J. No. L41, 23.2.95, p. 44) and 96/11/EC (O.J. No. L61, 12.3.96, p. 26), relating to plastic materials and articles intended to come into contact with foodstuffs.

These Regulations -

- (a) prohibit the use, sale or importation of plastic materials and articles which do not meet specified standards and provide a defence in relation to plastic materials and articles intended for export (regulation 3(1), (2) and (4));
- (b) prohibit the manufacture of plastic materials and articles with any monomer other than one which meets specified requirements and provide a defence in relation to plastic materials and articles manufactured before 14th September 1998 and in accordance with regulation 4 of the Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 1993 (regulations 3(3) and 4);
- (c) prohibit the use in the manufacture of plastic materials or articles of any specified additive which is not of good technical quality (regulation 5);
- (d) provide the methods for testing the capability of plastic materials or articles of transferring constituents to food (regulation 6);
- (e) stipulate the overall migration limit for plastic materials and articles (regulation 7);
- (f) require, at marketing stages other than retail, persons in possession of any plastic material or article intended to come into contact with food to ensure such material or article is accompanied by a specified declaration



(regulation 8);

(g) specify the enforcement authority (regulation 9);

(h) provide offences and defences and specify penalties (regulation 10);

(i) provide that specified presumptions shall arise from particulars shown in relation to a plastic material or article in accordance with the Materials and Articles in Contact with Food Regulations (Northern Ireland) 1987 ("the 1987 Regulations") (regulation 11);

(j) apply provisions of the 1987 Regulations and of the Food Safety (Northern Ireland) Order 1991 (regulation 12); and

(k) amend and revoke other legislation (regulations 13 and 14).

The materials and articles to which these Regulations relate are also subject to the 1987 Regulations.

These Regulations are made under specified provisions of the Food Safety (Northern Ireland) Order 1991 and, in so far as they cannot be made under those provisions, section 2(2) of the European Communities Act 1972. The provisions included under the 1972 Act are those which key into provisions of the 1987 Regulations (save where covered by Article 47(2)(a) of the 1991 Order) and revocations of Regulations made under section 2(2) of the 1972 Act.