

2008 No. 239

FOOD

The Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) Regulations (Northern Ireland) 2008

Made - - - -

2nd June 2008

Coming into operation -

1st July 2008

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

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(c), 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 Spreadable Fats (Marketing Standards) and the Milk and Milk Products (Protection of Designations) Regulations (Northern Ireland) 2008 and come into operation on 1st July 2008.

Interpretation

2.—(1) In these Regulations —

“the Council Regulation” means Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (Single CMO Regulation)(d);

“the Commission Regulation” means Commission Regulation (EC) No. 445/2007 laying down certain detailed rules for the application of Council Regulation (EC) No. 2991/94 laying

(a) Formerly the Department of Health and Social Services; see S.I. 1999/283 (N.I.1) Article 3(6)

(b) 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

(c) OJ No. L31, 1.2.2002, p.1; that Regulation was last amended by Commission Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p.3)

(d) OJ No. L299, 16.11.2007, p.1; there are amendments to this Regulation but none are relevant

down standards for spreadable fats and of Council Regulation (EEC) No. 1898/87 on the protection of designations used in the marketing of milk and milk products(a);

“Community provision” means a provision referred to in regulation 6(2);

“EEA Agreement” means the agreement on the European Economic Area signed at Oporto on 2nd May 1992(b), together with the protocol adjusting the Agreement signed at Brussels on 17th March 1993(c), as modified or supplemented;

“EEA State” means—

- (a) a state which is a member State; or
- (b) any other state which is a party to the EEA Agreement;

“member State” means a member State as defined in Part II of Schedule 1 to the European Communities Act 1972(d);

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

“sell” includes possess for sale, and offer, expose or advertise for sale;

“sell by retail” means to sell to a person who is not buying for the purpose of re-sale;

“vitamin A” means vitamin A present as such or as its esters and includes beta-carotene on the basis that 6 micrograms of beta-carotene or 12 micrograms of other biologically active carotenoids equal one microgram of retinol equivalent;

“vitamin D” means the anti-rachitic vitamins.

(2) Other expressions used in these Regulations and in the Council Regulation or the Commission Regulation have the same meaning in these Regulations as they have in the Council Regulation or the Commission Regulation.

Exemptions from these Regulations

3.—(1) Except where paragraph (2) applies, unless and until there is a decision by the EEA Joint Committee under Article 98 of the EEA Agreement to amend that Agreement so as to refer to the Council Regulation and the Commission Regulation, these Regulations shall not apply in respect of any spreadable fat to which the EEA Agreement applies and which —

- (a) is brought into Northern Ireland —
 - (i) from an EEA state (other than a member State) in which it was lawfully produced and sold, or
 - (ii) from another part of the United Kingdom if that spreadable fat was brought there from such an EEA state; and
- (b) is suitably labelled to indicate the nature of the spreadable fat.

(2) Regulation 4 does not apply in respect of any margarine which —

- (a) is brought into Northern Ireland —
 - (i) from an EEA State (other than the United Kingdom) in which it was lawfully produced and sold,
 - (ii) from a member State (other than the United Kingdom) in which it was in free circulation and lawfully sold, or
 - (iii) from another part of the United Kingdom in which it was lawfully produced and sold or in free circulation and lawfully sold; and
- (b) is suitably labelled to indicate the nature of the margarine.

(3) For the purposes of paragraph (2), “free circulation” has the meaning it bears in Article 23(2) of the Treaty establishing the European Community.

(a) OJ No. L106, 24.4.2007, p.24
(b) OJ No. L1, 3.1.1994, p.1
(c) OJ No. L1, 3.1.1994, p.571
(d) 1972 c.68

Vitamin content of margarine

4. A person shall not sell by retail any margarine unless it contains in every 100 grams —
- (a) not less than 800 micrograms and not more than 1,000 micrograms of vitamin A, and
 - (b) not less than 7.05 micrograms and not more than 8.82 micrograms of vitamin D,
- and a proportionate amount in any part of 100 grams.

Enforcement

5. Each district council in its district shall execute and enforce the Community provisions and these Regulations.

Offences and penalty

- 6.—(1) Any person who contravenes or fails to comply with —
- (a) regulation 4; or
 - (b) any Community provision,
- is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) The Community provisions are —
- (a) Article 114(1) of the Council Regulation (prescribed descriptions for milk and milk products) as read with Annex XII to that Regulation;
 - (b) Article 115 of the Council Regulation (marketing standards applying to spreadable fats, including compositional criteria for reserved descriptions), as read with —
 - (i) Annex XV to the Council Regulation,
 - (ii) Article 1 of and Annex I to the Commission Regulation, or
 - (iii) Article 2 of and Annex II to the Commission Regulation; and
 - (c) Article 3 of the Commission Regulation (requirements relating to the use of the designation “butter” for composite products) as read with Annex III to that Regulation.

Application of various provisions of the Order

7. The following provisions of the Order shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Order or Part thereof is to be construed as a reference to these Regulations —
- (a) Article 2(4) (which relates to extended meaning of “sale”)
 - (b) Article 3 (application to food offered as prizes etc.);
 - (c) Article 4 (presumptions that food intended for human consumption);
 - (d) Article 19 (offences due to fault of another person);
 - (e) Article 20 (defence of due diligence), as it applies for the purposes of Article 13 or 14;
 - (f) Article 21 (defence of publication in the course of a business);
 - (g) Article 30(8) (which relates to documentary evidence);
 - (h) Article 34 (obstruction etc., of officers);
 - (i) Article 36 (punishment of offences) in so far as it relates to offences under Article 34(1) and (2).

Revocations

8. The following Regulations are revoked —

- (a) The Milk and Milk Products (Protection of Designations) Regulations (Northern Ireland) 1990(a);
- (b) The Spreadable Fats (Marketing Standards) Regulations (Northern Ireland) 1999(b);
- (c) The Spreadable Fats (Marketing Standards) (Amendment) Regulations (Northern Ireland) 2007(c).

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 2nd June 2008.



Don Hill

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

(a) S.R. 1990 No. 103, as amended by S.R. 1991 No. 203
(b) S.R. 1999 No. 383
(c) S.R. 2007 No. 304

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the execution and enforcement, of certain provisions of Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products (OJ No. L299, 16.11.2007, p.1) (“the Council Regulation”).

The Council Regulation repeals a number of other EC instruments and re-enacts their provisions without amendment. These Regulations provide for the enforcement of provisions formerly contained in two of the repealed EC instruments and formerly enforced in two separate statutory rules.

The provisions of the Council Regulation include:

- (a) the requirement that milk and milk products marketed for human consumption must comply with certain specifications as to names and composition (*Article 114(1) and Annex XII*); and
- (b) the requirement that certain spreadable fats intended for human consumption must comply with specifications relating to their sales description, labelling and presentation, and use of terminology (*Article 115 and Annex XV*).

The provisions contained in the Council Regulation as regards spreadable fats are supplemented by Commission Regulation (EC) No. 445/2007 (OJ No. L106, 24.4.2007, p.24).

These Regulations —

- (a) provide an exemption for spreadable fats imported from an EEA State other than a member State (*regulation 3(1)*);
- (b) specify the required levels for certain vitamins in margarine (*regulation 4*), subject to an exemption for margarines brought into Northern Ireland from elsewhere in the EEA or the UK that do not comply with these national rules (*regulation 3(2)*);
- (c) designate the authorities responsible for enforcement of these Regulations and the EU Regulations mentioned in paragraphs 3 and 4 above (*regulation 5*);
- (d) create a summary offence of failing to comply with the requirements of these Regulations or the relevant EU provisions (*regulation 6*); and
- (e) apply certain provisions of the Food Safety (Northern Ireland) Order 1991 for the purposes of these Regulations.

A full regulatory assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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