STATUTORY RULES OF NORTHERN IRELAND

2016 No. 187

WEIGHTS AND MEASURES

The Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2016

Made - - - - *22nd March 2016*

Coming into operation *18th April 2016*

The Department of Enterprise, Trade and Investment ("the Department") is designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to food and drink intended for sale for human consumption, including the presentation, packaging, labelling, marketing and advertising of such food and drink.

There has been a consultation, 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**), during the preparation and evaluation of the following Regulations.

Accordingly, the Department makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Citation and commencement

1. These Regulations may be cited as the Weights and Measures (Food) (Amendment) Regulations (Northern Ireland) 2016 and shall come into operation on 18th April 2016.

Interpretation

2. The Interpretation Act (Northern Ireland) 1954(**4**) shall apply to these Regulations as it applies to an Act of the Assembly.

(**1**) S.I.2005/2766, to which there are amendments not relevant to these Regulations
(**2**) 1972 c.68; section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1) and the European Union (Amendment) Act 2008 (c.7), section 3 (3) and Part 1 of the Schedule.
(**3**) OJ No L 31, 1.2.2002, p 1, last amended by Commission Regulation (EC) No 652/2014 (OJ No L189, 27.6.2014, p.1)
(**4**) 1954 c. 33 (N.I)

Amendments to the Weights and Measures (Northern Ireland) Order 1981

3. The Weights and Measures (Northern Ireland) Order 1981(**5**) is amended as set out in regulations 4 to 12.

4. In Article 2(2) (interpretation)(**6**) before the definition of "gross weight" insert—

""the FIC Regulation" means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers(**7**);".

5. In Article 21 (quantity to be stated in writing in certain cases), after paragraph (6) insert—

"(7) There shall be exempt from the requirements of this Article goods that are subject to the FIC Regulation."

6. In Article 22 (Short weight etc)—

(a) in paragraph (3) for "goods pre-packed" substitute "goods that are pre-packed within the meaning of this Order or are prepacked food within the meaning of the FIC Regulation and (in either case) are" and after "were pre-packed" insert "within the meaning of this Order or were prepacked food within the meaning of the FIC Regulation and (in either case) were";

(b) in paragraph (4)(a) after "pre-packed" insert "within the meaning of this Order or prepacked food within the meaning of the FIC Regulation";

(c) in paragraph (5)(b)(i), after "paragraph (3)" insert "or required by the FIC Regulation to be prepacked food as mentioned in that paragraph"; and

(d) in (5)(b)(ii), after "other than Article 21" insert "or required by the FIC Regulation".

7. After Article 22 insert—

"**Non-compliance with certain requirements of the FIC Regulation**

22A.—(1) Subject to paragraph (2), a food business operator to which Article 1(3) of the FIC Regulation applies is guilty of an offence if that food business operator fails to comply with—

(a) any of the provisions of Article 8 of the FIC Regulation (responsibilities of food business operators) applicable to the food business operator, to the extent that the provisions relate to net quantity;

(b) Article 9(1)(e) of the FIC Regulation (mandatory indication of net quantity of food), except to the extent that it relates to a failure to comply with Article 13(5) of the FIC Regulation; or

(c) Chapter V of the FIC Regulation (voluntary food information), to the extent that it imposes requirements in respect of net quantity.

(2) A food business operator is not guilty of an offence under paragraph (1) if the food business operator acts in accordance with any of the following—

(a) an exception contained in Chapter IV of the FIC Regulation;

(b) national measures adopted under Article 40 of the FIC Regulation (milk and milk products);

(**5**) S.I.1981/231 (N.I. 10))

(**6**) Article 2(2) was amended by the Weights and Measures Act 1985 (c. 72 Schedule 12 paragraph 10 (3), the Weights and Measures (Amendment) Act (Northern Ireland) 2000 the schedule paragraph 2, the Food Safety (Northern Ireland) Order 1991 Article 2 and the Weights and Measures Packaged Goods Regulations (Northern Ireland) 2011 Schedule 1 part 2 paragraph 2

(**7**) OJ No L 304, 22.11.2011, p 18, last amended by Commission Delegated Regulation (EU) No 78/2014 (OJ No L 27, 30.1.2014, p 7).

(c) national measures maintained under Article 42 of the FIC Regulation (measures adopted before 12 December 2011);

(d) transitional measures under Article 54(1) of the FIC Regulation.

(3) In this Article "food business operator" and "net quantity" have the same meanings as in the FIC Regulation."

8. In Article 24(3) (defence: deficiency due to evaporation or drainage), after "required by or under this Order", insert "or the FIC Regulation".

9. In Article 24(6)(b) (reasonable number to be tested), after "required by or under this Order", insert "or the FIC Regulation".

10. In Article 25 (offences due to default of third person), in paragraph (2) after "under this Part", insert "(other than Article 22A)".

11. In Article 26 (special powers of inspectors with respect to certain goods), in paragraph (1)(b) and (c) and (2) after "under this Order" each time it appears, insert "or the FIC Regulation".

12. In Schedule 7 (composite goods and collections of articles)—

(a) in paragraph 2(1), after head (a) insert—

"(aa) that are subject to the FIC Regulation, or";

(b) in paragraph 3, after subparagraph (1) insert—

"(1A) This paragraph does not apply to aerosol products containing goods that are subject to the FIC Regulation."

(c) in paragraph 4, after subparagraph (1) insert—

"(1A) This paragraph does not apply to a collection containing any goods that are subject to the FIC Regulation."

Amendments to the Weights and Measures (Various Foods) Order (Northern Ireland) 1988

13. The Weights and Measures (Various Foods) Order (Northern Ireland) 1988(**8**) is amended as set out in regulations 14 to 16.

14.—(1) Article 2 is renumbered as article 2(1).

(2) In the renumbered article 2(1)—

(a) before the definition of "meat" insert—

""mass caterer" means any establishment (including a vehicle or a fixed or mobile stall), such as restaurants, canteens, schools, hospitals and catering enterprises in which, in the course of a business, food is prepared to be ready for consumption by the final consumer;"; and

(b) after the definition of "the Order of 1981" insert—

""pre-packed", in relation to food to which this Order applies, means either or both of—

(a) made up for direct sale (within the meaning of Article 2(2)(e) of the FIC Regulation(**9**) by way of retail;

(b) made up in advance ready for retail sale in an open container;

(**8**) S.R. 1988 No. 408.

(**9**) The FIC Regulation means Regulation (EU) No 1169/2011 of the European Parliament and of the Council on the provision of food information to consumers, as defined in Article 2(2) of the Weights and Measures (Northern Ireland) Order 1981

"relevant wholesale", in relation to food to which this Order applies, means a sale by way of wholesale, but does not include any of the following:

(a) a sale to a mass caterer;

(b) a supply of food that is prepacked food within the meaning of the FIC Regulation intended for sale to the final consumer or to a mass caterer, or any other supply of food that is made up in advance ready for retail sale in an open container; or

(c) a supply to which Article 8(8) of the FIC Regulation(**10**) applies;".

(3) After the renumbered article 2(1) insert—

"(2) References in this Order to items being "loose" include items packed at the request of the customer."

15. In article 4—

(a) in paragraph (2) for "not pre-packed, shall" substitute "sold loose must"; and

(b) for paragraph (3) substitute—

"(3) Subject to paragraphs (7) and (8), where food to which this article applies (other than cheese and fish) is sold in a relevant manner (as defined in paragraph (3A)), it must be sold only—

(a) by net weight; or

(b) if it is sold in a container which does not exceed the permitted weight specified in Table A of Schedule 2, either by net weight or gross weight.

(3A) For the purposes of paragraph (3), food is sold "in a relevant manner" if it is sold—

(a) pre-packed otherwise than by retail sale;

(b) loose to a mass caterer; or

(c) by relevant wholesale."

16. In article 5—

(a) in paragraph (4) for "not pre-packed, shall" substitute "sold loose must";

(b) in paragraph (5) after "mushrooms" insert "which are sold pre-packed or loose"; and

(c) in subparagraph (a) of paragraph (6) for "not pre-packed" substitute "sold loose".

Amendments to the Weights and Measures (Miscellaneous Foods) Order (Northern Ireland) 1989

17. The Weights and Measures (Miscellaneous Foods) Order (Northern Ireland) 1989(**11**) is amended as set out in regulations 18 to 30.

18.—(1) Article 2 is renumbered as article 2(1).

(2) In the renumbered article 2(1)—

(**10**) Article 8 (8) of the FIC Regulation sets out the application of the FIC Regulation to food business operators that supply food not intended for the final consumer or mass caterers to other food business operators . In those circumstances, sufficient information must be provided to the recipient food business operator to enable the food business operator to meet its obligations under Article 8 (2) of the FIC Regulation, which requires the food business operator to ensure the presence and accuracy of the food information in accordance with the applicable food information law and relevant national provisions

(**11**) S.R. 1989 No. 69, amended by S.R. 1990 No. 230, 1995 No. 230, 2005 No. 516, 2010 No. 203, 2011 No. 331, 2013 No. 261.

(a) for the definition of ""chicory", "chicory extract paste", "coffee", "coffee mixture", "coffee extract paste", "instant chicory", "instant coffee", "liquid chicory extract" and "liquid coffee extract"", substitute—

> ""chicory", "chicory extract paste", "coffee extract paste", "instant chicory", "instant coffee", "liquid chicory extract" and "liquid coffee extract", have the same meanings as in the Coffee Extracts and Chicory Extracts Regulations (Northern Ireland) 2001(**12**);";

(b) for the definition of ""chocolate confectionery", "flour confectionery" and "sugar confectionery"" substitute—

> ""chocolate confectionery" means any food which is ready for consumption without further preparation, of which a characterising ingredient is chocolate, cocoa or non-fat cocoa solids, and includes food of which a characterising ingredient is carbohydrate sweetening matter and which has a chocolate or chocolate-flavoured coating, but does not include any biscuits, chocolate products, flour confectionery or edible ice;";

(c) for the definition ""cocoa product", "chocolate product", "fancy chocolate product", "container" in relation to these products and "reserved description"", substitute—

> ""chocolate product" means any chocolate product to which the Cocoa and
>
> Chocolate Products Regulations (Northern Ireland) 2003(**13**) apply;
>
> "cocoa product" means any cocoa product to which the Cocoa and Chocolate Products Regulations (Northern Ireland) 2003 apply;";

(d) before the definition of "coffee bag" insert—

> ""coffee" means the dried seed of the coffee plant whether such seed has been roasted or ground or both roasted and ground;";

(e) for the definition of ""condensed milk" and "dried milk"" substitute—

> ""condensed milk" means milk, partly skimmed milk or skimmed milk or any combination thereof, whether with or without the addition of cream, dried milk or sucrose, which has been concentrated by the partial removal of water, but does not include dried milk;";

(f) before the definition of "liquid coffee and chicory products" insert—

> ""container", in relation to cocoa products, chocolate products and fancy chocolate products, includes any form of packaging of goods for sale as a single item, whether by way of wholly or partly enclosing the food or by way of attaching the food to some other article, and in particular includes a wrapper or confining band, but does not include any crimp case used to support the base or the base and sides of any chocolate product;
>
> "dried milk" means milk, partly skimmed milk or skimmed milk or any combination thereof, whether with or without the addition of cream, which has been concentrated to the form of powder, granule or solid by the removal of water;
>
> "fancy chocolate product" includes any chocolate product in the form of figurines, cigarettes or eggs or enclosed in a seasonal selection pack;
>
> "flour confectionery" means any cooked food which is ready for consumption without further preparation (other than reheating), of which a characterising ingredient is ground cereal, including shortbread, sponges, crumpets, muffins, macaroons, ratafias, pastry and pastry cases, and also includes meringues, petits

(**12**) S.R. 2001 No. 45, amended by S.R. 2014 No. 223; there are other amending regulations but none is relevant
(**13**) S.R. 2003 No. 313, amended by S.R. 2014 No.223; there are other amending regulations but none are relevant