Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY RULES OF NORTHERN IRELAND

2013 No. 220

FOOD

The Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013

Made - - - -	*11th September 2013*
Coming into operation	*31st October 2013*

The Department of Health, Social Services and Public Safety [F1] makes the following Regulations in exercise of the powers conferred by Articles 15(1)(a), (e) and (f), 16(1) and (2), 25(1), (2)(e) and (f) and (3), and 47(2) of the Food Safety (Northern Ireland) Order 1991 [F2], as read with paragraph 1A of Schedule 2 to the European Communities Act 1972 [F3].

In accordance with Article 47(3A) of the Food Safety (Northern Ireland) Order 1991, it has had regard to relevant advice given by the Food Standards Agency.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Department of Health, Social Services and Public Safety that it is expedient for any reference to an Article of or an Annex to any of the EU instruments specified in regulation 2(4) to be construed as a reference to that Article or that Annex as amended from time to time.

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 [F4], there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

F1 Formerly the Department of Health and Social Services: see S.I. 1999/283 (N.I.1) Article 3(6)

F2 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

F3 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51) and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (2008 c.7)

F4 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, p14)

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PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013 and come into operation on 31st October 2013.

Interpretation

2.—(1) In these Regulations —

"Directive 2009/32" means Directive 2009/32/EC of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients [F5];

"Regulation 2065/2003" means Regulation (EC) No 2065/2003 of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods [F6];

"Regulation 1332/2008" means Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes [F7];

"Regulation 1333/2008" means Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives [F8], as read with —

(a) Commission Regulation (EU) No 1129/2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council by establishing a Union list of food additives [F9],

(b) Commission Regulation (EU) No 1130/2011 amending Annex III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives by establishing a Union list of food additives for use in food additives, food enzymes, food flavourings and nutrients [F10], and

(c) Commission Regulation (EU) No 231/2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council [F11];

"Regulation 1334/2008" 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 [F12], as read with Commission Regulation (EU) No 873/2012 on transitional measures concerning the Union list of flavourings and source materials set out in Annex I to Regulation (EC) 1334/2008 of the European Parliament and of the Council [F13];

"the EU Regulations" means Regulation 2065/2003, Regulation 1332/2008, Regulation 1333/2008 and Regulation 1334/2008; and

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

(2) Other expressions used in these Regulations and in the EU instruments listed in paragraph (4) have the same meaning in these Regulations as they do in those instruments.

(3) Any reference in these Regulations to an Article of or Annex to any of the EU instruments listed in paragraph (4) is a reference to that Article or Annex as amended from time to time.

(4) The EU instruments are Directive 2009/32, Regulation 2065/2003, Regulation (EC) No 1331/2008 of the European Parliament and of the Council establishing a common authorisation procedure for food additives, food enzymes and food flavourings [F14], Regulation 1332/2008, Regulation 1333/2008 and Regulation 1334/2008.

(5) The Interpretation Act (Northern Ireland) 1954 [F15] shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

F5 OJ No. L141, 6.6.2009, p.3. This instrument was last amended by Commission Directive 2010/59/EU (OJ No. L225, 27.8.2010, p.10)
F6 OJ No. L309, 26.11.2003, p.1. This instrument was last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council (OJ No. L188, 18.7.2009, p.14)
F7 OJ No. L354, 31.12.2008, p.7. This instrument was last amended by Commission Regulation (EU) No 1056/2012 (OJ No. L313, 13.11.2012, p.9)
F8 OJ No. L354, 31.12.2008, p.16. This instrument was last amended by Commission Regulation (EU) No. 739/2013 (OJ No. L204, 31.7.2013, p.35)
F9 OJ No. L295, 12.11.2011, p.1
F10 OJ No. L295, 12.11.2011, p.178
F11 OJ No. L83, 22.3.2012, p.1. This instrument was last amended by Commission Regulation (EU) No. 497/2013 (OJ No. L143, 30.5.2013, p.20)
F12 OJ No. L354, 31.12.2008, p.34. This instrument was last amended by Commission Regulation (EU) No 545/2013 (OJ No. L163, 15.06.2013, p.15)
F13 OJ No. L267, 2.10.2012, p.162
F14 OJ No. L354, 31.12.2008, p.1. This instrument is implemented by Commission Regulation (EU) No. 234/2011 (OJ No. L64, 11.03.2011, p.15) and that Regulation has been amended by Commission Implementing Regulation (EU) No. 562/2012 (OJ No. L168, 28.06.2012, p.21)
F15 1954 c. 33 (N.I.)

PART 2

Food additives, flavourings and enzymes

Offence of contravening EU requirements on food additives

3. Any person who contravenes, or who uses or places on the market a product that fails to comply with, any of the provisions of Regulation 1333/2008 specified in the first column of Table 1 of Schedule 1, as read with transitional measures contained in or to be read with that Regulation, commits an offence.

Offence of contravening EU requirements on flavourings, including smoke flavourings

4. Any person who contravenes, or who uses or places on the market a product which fails to comply with, any of the provisions of Regulation 1334/2008 specified in the first column of Table 1 of Schedule 2, as read with Article 4 (flavouring substances under evaluation) of Commission Implementing Regulation (EU) No 872/2012 adopting the list of flavouring substances provided for by Regulation (EC) No 2232/96 of the European Parliament and of the Council [F16] and with transitional measures contained in or to be read with Regulation 1334/2008, commits an offence.

F16 OJ No. L267, 2.10.2012, p.1

5. Any person who contravenes, or who uses or places on the market a product which fails to comply with, any of the provisions of Regulation 2065/2003 specified in the first column of Table 1 of Schedule 3, as read with Article 20 (transitional measures), commits an offence.

Offence of contravening EU requirements on food enzymes

6. Any person who contravenes, or who uses or places on the market a product which fails to comply with, any of the provisions of Regulation 1332/2008 specified in the first column of Table 1 of Schedule 4, as read with Articles 18 and 24 (transitional measures), commits an offence.

Improvement notice – application of Article 9 of the Order

7.—(1) Article 9 of the Order (improvement notices) applies for the purposes of these Regulations with the following modifications.

(2) For paragraph (1), substitute—

"(1) If an authorised officer has reasonable grounds for believing that a person is failing to comply with a provision of the Food Additives, Flavourings. Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013 specified in paragraph (1A), the authorised officer may, by a notice served on that person (an "improvement notice")—

(a) state the officer's grounds for believing that the person is failing to comply with the relevant provision;

(b) specify the matters which constitute the person's failure so to comply;

(c) specify the measures which, in the officer's opinion, the person must take in order to secure compliance; and

(d) require the person to take those measures, or measures that are at least equivalent to them, within such period as may be specified in the notice.

(1A) The provisions are-

(a) Regulation 13(2); and

(b) any EU provision specified in the first column of Table 2 of Schedule 1, 2, 3 or 4.".

(3) Omit paragraph (3).

Appeals against an improvement notice

8.—(1) Article 37 of the Order applies for the purposes of these Regulations as modified by paragraphs (2) and (3).

(2) For paragraph (1) substitute—

"(1) Any person who is aggrieved by a decision of an authorised officer to serve an improvement notice under Article 9(1) as applied and modified by regulation 7 of the Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013 may appeal to a court of summary jurisdiction".

(3) In paragraph (2A)(b) for "(1)(a)" substitute " (1) as applied by regulation 8 of the Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013; ".

(4) Article 38 of the Order applies for the purposes of these Regulations with the modification that in paragraph (1) and (2) " as applied by regulation 7 of the Food Additives, Flavourings, Enzymes and Extraction Solvents Regulations (Northern Ireland) 2013 " is inserted after "improvement notice".

PART 3

Extraction solvents

Controls on extraction solvents

9. In this Part any reference to a numbered Article or Annex is a reference to that Article of or Annex to Directive 2009/32.

10. The provisions of this Part do not apply to any extraction solvent —

(a) used in the production of any food additives, vitamins or any other nutritional additives, unless such food additives, vitamins or other nutritional additives are listed in Annex I; or

(b) intended for export outside the European Union.

11. In this Part "permitted extraction solvent" means —

(a) an extraction solvent that —

(i) is listed in Annex I,

(ii) is used in accordance with the conditions of use and within any maximum residue limits specified in that Annex,

(iii) does not contain a toxicologically dangerous amount of any element or substance,

(iv) subject to any exceptions deriving from specific purity criteria, does not contain more than 1 mg/kg of arsenic or more than 1 mg/kg lead, and

(v) meets the requirements of Article 3(c) as regards purity criteria; or

(b) water to which substances regulating acidity or alkalinity may have been added; or

(c) food substances which possess solvent properties.

12. A person must not use as an extraction solvent in the production of food any extraction solvent that is not a permitted extraction solvent.

13.—(1) A person must not place on the market —

(a) an extraction solvent that is not a permitted extraction solvent, or

(b) any food having in it or on it an added extraction solvent that is not a permitted extraction solvent.

(2) A person must not place on the market an extraction solvent that does not meet the requirements of regulation 14.

14.—(1) Subject to paragraph (2), the following information must appear on the packaging, container or label —

(a) the commercial name as indicted in Annex I;

(b) a clear indication that the material is of a quality suitable for use for the extraction of food or food ingredients;

(c) a reference by which the batch or lot may be identified;