STATUTORY RULES OF NORTHERN IRELAND

2011 No. 236

FOOD

The Plastic Kitchenware (Conditions on Imports from China) Regulations (Northern Ireland) 2011

Made - - - - *22nd June 2011*

Coming into operation *1st July 2011*

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

In so far as these Regulations cannot be made under the powers in the Food Safety (Northern Ireland) Order 1991, the Department of Health, Social Services and Public Safety makes these Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**3**).

The Department of Health Social Services and Public Safety has been designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to measures relating to food (including drink)(**4**).

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.

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(**5**), 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 Plastic Kitchenware (Conditions on Imports from China) Regulations (Northern Ireland) 2011 and come into operation on 1st July 2011.

(**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**) 1972 c.68
(**4**) S.I 2003/2901
(**5**) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by 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)

Interpretation

2.—(1) In these Regulations —

"the Agency" means the Food Standards Agency;

"the Commission Regulation" means Commission Regulation (EU) 284/2011 laying down specific conditions and detailed procedures for the import of polyamide and melamine plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China(**6**);

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

"relevant product" means plastic kitchenware originating in or consigned from the People's Republic of China and Hong Kong Special Administrative Region, China.

(2) Any expression used in these Regulations and the Commission Regulation bears the same meaning in these Regulations as it bears in the Commission Regulation and any reference to a numbered Article is a reference to that Article in the Commission Regulation.

(3) The Interpretation Act (Northern Ireland) 1954(**7**) shall apply to these Regulations as it applies to an Act of the Assembly.

Breach of conditions on import of plastic kitchenware from China

3.—(1) A person must not place on the market any relevant product that has been imported into the European Union other than in compliance with the requirements of Article 3(1), (2) and (3) (import conditions).

(2) A person must not place on the market any relevant product until —

(a) the checks specified in paragraph 1(a) and, as the case may be, paragraph 1(b) of Article 6 (controls at the first point of introduction) have been completed; and

(b) the district council has issued a declaration in accordance with Article 3(4) indicating that the relevant product conforms and is acceptable for release into free circulation.

Offences and penalties

4. Any person who fails to comply with regulation 3(1) or (2) is guilty of an offence and liable —

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to a fine.

Competent authorities

5.—(1) The competent authority for the purposes of Articles 3(1) and (4), 4, 6(1), 7 and 9 is each district council in its district.

(2) The competent authority for the purpose of Article 6(2) is the Agency.

Execution and enforcement

6.—(1) It is the duty of each district council in its district to execute and enforce the Commission Regulation and these Regulations.

(2) Each district council must —

(**6**) OJ No. L77, 23.3.2011, p.25
(**7**) 1954 c.33 (N.I.)

(a) immediately inform the Agency of the results of any laboratory analysis which it has caused to be carried out under Article 6(1) if the results of that analysis indicate non-compliance; and

(b) give the Agency such information and assistance as it may reasonably request in connection with the execution and enforcement of these Regulations.

(3) The Commissioners for Her Majesty's Revenue and Customs will carry out the functions given to customs authorities under Article 8.

Expenses arising from official controls

7.—(1) Expenses charged pursuant to Article 27(1) of Regulation 882/2004 by a district council to an importer in connection with the checks mentioned in Article 6(1) are payable by the importer on the written demand of the district council.

(2) Where a district council identifies non-compliance —

(a) with the requirements of Article 3(1),(2) or (3) or Article 4; or

(b) following the checks mentioned in Article 6(1)(b),

expenses charged pursuant to Article 54(5) of Regulation 882/2004 by a district council to an importer are payable by the importer on the written demand of the district council.

(3) In paragraph (1) and (2) and in regulation 8(3), "Regulation 882/2004" means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(**8**).

Notices and actions in the case of non-compliance

8.—(1) If an importer presents a consignment of relevant product for import into Northern Ireland without submitting a declaration and accompanying laboratory report in accordance with the requirements of Article 3(1),(2) and (3), the district council may by written notice require the importer to submit such a declaration and laboratory report within 14 days of the date of service of the notice.

(2) If the checks provided for in Article 6(1) indicate that —

(a) where notice has been served under paragraph (1), the declaration specified in Article 3(1) together with the laboratory report specified in Article 3(3) has not been submitted by the date specified in the notice; or

(b) where notice has not been served under paragraph (1), the declaration specified in Article 3(1) together with the laboratory report specified in Article 3(3) has not been submitted; or

(c) a declaration or a laboratory report has been submitted that does not comply with the requirements of Article 3(1),(2) and (3); or

(d) the relevant product that is the subject of the checks —

(i) fails an identity check, or

(ii) does not meet the requirements of Commission Regulation (EU) No 10/2011 on plastic materials and articles intended to come into contact with food(**9**),

the district council must take the steps set out in paragraph (3).

(**8**) OJ No. L165, 30.4.2004, p. 1. The revised text is set out in a corrigendum (OJ No. L191, 28.5.2004, p.1). This Regulation was last amended by Commission Regulation (EU) No. 208/2011 amending Annex VII to Regulation (EC) 882/2004 of the European Parliament and of the Council and Commission Regulations (EC) No. 180/2008 and (EC) No. 737/2008 as regards lists and names of EU reference laboratories (OJ No.L58, 3.3.2011, p.29)

(**9**) OJ No. L12, 15.1.2011, p.1