STATUTORY RULES OF NORTHERN IRELAND

2010 No. 321

FOOD

The Materials and Articles in Contact with Food Regulations (Northern Ireland) 2010

Made - - - -	*15th September 2010*
Coming into operation	*20th October 2010*

The Department of Health, Social Services and Public Safety(**1**) makes the following Regulations in exercise of the powers conferred by Articles 15(2), 16(1) and (2), 25(1)(a), 2(a) and (3), 32 and 47(2) of the Food Safety (Northern Ireland) Order 1991(**2**) as read with paragraph 1A of Schedule 2 to the European Communities Act 1972(**3**).

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 certain references to an EU instrument or to an Annex to an EU instrument specified in regulation 2(3) to be construed as references to that instrument or Annex as amended from time to time.

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(**4**), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

(**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. 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 Schedule 1 to the European Union (Amendment) Act 2008 (2008 c.7)

(**4**) 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 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)

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2010 and come into operation on 20th October 2010.

Interpretation

2.—(1) In these Regulations —

"the 2009 Regulations" means the Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 2009(**5**);

"Directive 2002/72/EC" means Commission Directive 2002/72/EC relating to plastic materials and articles intended to come into contact with foodstuffs(**6**);

"Directive 2007/42/EC" means Commission Directive 2007/42/EC relating to materials and articles made of regenerated cellulose film intended to come into contact with foodstuffs(**7**);

"Regulation 1935/2004" means Regulation (EC) No. 1935/2004 of the European Parliament and of the Council on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC(**8**);

"Regulation 2023/2006" means Commission Regulation (EC) No. 2023/2006 on good manufacturing practice for materials and articles intended to come into contact with food(**9**);

"Regulation 450/2009" means Commission Regulation (EC) No. 450/2009 on active and intelligent materials and articles intended to come into contact with food(**10**);

"authorised officer" means any person, whether or not an officer of the district council having responsibility for execution and enforcement under regulation 14(1), who is authorised by that district council in writing to act in matters arising under these Regulations;

"import" means import in the course of a business from a place other than a member state of the European Union, Norway, Iceland or Liechtenstein;

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

"plastics" means those materials and articles to which Directive 2002/72/EC applies;

"preparation" in relation to food includes manufacture and any form of treatment or process;

"regenerated cellulose film" means a thin sheet material obtained from refined cellulose derived from unrecycled wood or cotton, with or without the addition of suitable substances, either in the mass or on one or both surfaces, but does not include synthetic casings of regenerated cellulose; and

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

(**5**) S.R. 2009 No.56
(**6**) OJ No. L220, 15.8.2002, p.18. This Directive was corrected by a corrigendum (OJ No. L39, 13.2.2003, p.1), and has been amended by Commission Directives 2004/1/EC (OJ No. L7, 13.1.2004, p.45), 2004/19/EC (OJ No. L71, 10.3.2004, p.8), 2005/79/EC (OJ No. L302, 19.11.2005, p.35), 2007/19/EC (OJ No.L97, 12.4.2007, p.50), 2008/39/EC (OJ No L63, 7.3.2008, p.6) and Commission Regulation (EC) No. 975/2009 (OJ No. L274, 20.10.2009, p.3)
(**7**) OJ No. L172, 30.6.2007, p.71. This Directive repealed and consolidated without further amendment Commission Directive 93/10/EEC as last amended by Commission Directive 2004/14/EC
(**8**) OJ No. L338, 13.11.2004, p.4, amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council (OJ No. L188, 18.7.2009, p.14)
(**9**) OJ No. L384, 29.12.2006, p.75, amended by Commission Regulation (EC) No.282/2008 (OJ No. L86, 28.3.2008, p.9)
(**10**) OJ No. L135, 30.5.2009, p.3

(2) Expressions used in these Regulations and in Regulation 1935/2004, Regulation 2023/2006 or Regulation 450/2009 bear the same meaning in these Regulations as they bear in those Regulations.

(3) Any reference to Regulation 1935/2004 or Directive 2002/72/EC is a reference to that Regulation or, as the case may be, that Directive as amended, at the date of making these Regulations and any reference to Regulation 2023/2006, the Annex of Directive 2002/72/EC, or the Annex of Directive 2007/42/EC is a reference to that Regulation or, as the case may be, those Annexes as amended from time to time thereafter.

(4) The Interpretation Act (Northern Ireland) 1954(**11**) applies to these Regulations as it applies to an Act of the Assembly.

Scope

3. The provisions of these Regulations do not apply to those materials and articles specified in sub-paragraphs (a), (b) and (c) of Article 1(3) of Regulation 1935/2004.

PART 2

General Requirements for Materials and Articles

Offences of contravening specified provisions of Regulation 1935/2004

4. Subject to the transitional provisions contained in Article 27 of Regulation 1935/2004, any person who contravenes any of the following provisions of that Regulation is guilty of an offence —

(a) Article 3 (general requirements);

(b) Article 4 (special requirements for active and intelligent materials and articles);

(c) Article 11(4) and (5) (provisions relating to authorisation at EU level);

(d) Article 15(1), (3), (4), (7) and (8) (labelling);

(e) Article 16(1) (declaration of compliance); or

(f) Article 17(2) (traceability).

Offences of contravening Article 4 of Regulation 2023/2006

5. Any person who fails to comply with the requirements of Article 4 (conformity with good manufacturing practice) of Regulation 2023/2006 is guilty of an offence.

Offences of contravening specified provisions of Regulation 450/2009

6. Subject to the transitional provisions contained in Article 14 of Regulation 450/2009, any person who contravenes any of the following provisions of that Regulation is guilty of an offence —

(a) Article 4 (placing on the market of active and intelligent materials and articles);

(b) Article 5(1) (list of substances that may be used in active and intelligent components) as read with Article 5(2);

(c) Article 9(1) (relating to certain categories of substances not on the authorised list), as read with Article 9(2) and (3);

(d) Article 10(1) (relating to a category of substances not on the authorised list), as read with Article 10(2);

(**11**) 1954 c.33 (N.I.)

(e) Article 11(1) and (2) (rules on labelling);

(f) Article 12 (requirement for a declaration of compliance); or

(g) Article 13 (requirements relating to supporting documentation).

Competent authorities

7.—(1) The following bodies are designated as the competent authorities for the purposes of the provisions of Regulation 1935/2004 specified below —

(a) in respect of Articles 9 and 13, the Food Standards Agency; and

(b) in respect of Articles 16(1) and 17(2), the Food Standards Agency and the district council having responsibility for enforcement pursuant to regulation 14(1).

(2) The competent authority for the purposes of Article 6(2) and 7(3) of Regulation 2023/2006 is each district council in its district.

(3) The competent authorities for the purposes of Article 13 of Regulation 450/2009 are the Food Standards Agency and the district council having responsibility for enforcement pursuant to regulation 14(1).

PART 3

Requirements for Vinyl Chloride

Limits and migration limits

8.—(1) Materials and articles which are manufactured with vinyl chloride polymers or copolymers —

(a) must not contain vinyl chloride monomer in a quantity exceeding 1 milligram per kilogram of the material or article as measured by the method of analysis specified in regulation 9(1); and

(b) must be manufactured in such a way that they do not transfer to foods with which they are in contact any quantity of vinyl chloride exceeding 0.01 milligrams of vinyl chloride per kilogram of food as measured by the method of analysis specified in regulation 9(2).

(2) A person must not —

(a) sell;

(b) import; or

(c) use in the course of a business in connection with the storage, preparation, packaging, selling or serving of food,

any material or article that does not comply with paragraph (1).

Methods of Analysis

9.—(1) The method to be used in analysing any sample for the purpose of establishing the quantity of vinyl chloride monomer present in the material or article in order to determine whether it complies with regulation 8(1)(a) is the method specified in the Annex to Commission Directive 80/766/EEC laying down the Community method of analysis for the official control of the vinyl chloride monomer level in materials and articles which are intended to come into contact with foodstuffs)(**12**).

(**12**) OJ No. L213, 16.8.80, p.42

(2) The method to be used in analysing any food for the purpose of establishing the quantity of vinyl chloride present in the food in order to determine whether a material or article which is or has been in contact with the food complies with regulation 8(1)(b) is the method specified in the Annex to Commission Directive 81/432/EEC laying down the Community method of analysis for the official control of vinyl chloride released by materials and articles into foodstuffs)(**13**).

PART 4

Requirements for Regenerated Cellulose Film

Controls and limits

10.—(1) This Part applies to regenerated cellulose film which —

(a) constitutes a finished product in itself; or

(b) is part of a finished product containing other materials,

and is intended to come into contact with food, or by being used for that purpose, does come into contact with food.

(2) Except in paragraph (4), any reference in this regulation to Annex II is a reference to Annex II to Directive 2007/42/EC.

(3) Subject to paragraph (5), and regulation 12, a person must not manufacture any regenerated cellulose film intended to come into contact with food using any substance or group of substances other than the substances named or described —

(a) in the first column (denominations) of Annex II (list of substances authorised in the manufacture of regenerated cellulose film) in the case of —

(i) uncoated film; or

(ii) coated film where the coating is derived from cellulose;

(b) in the first column of the First Part (uncoated regenerated cellulose film) of Annex II in the case of film to be coated, where the coating will consist of plastics,

and in each case other than in accordance with the conditions and restrictions specified in the corresponding entry in the second column of the appropriate Part of Annex II, as read with the preamble to that Annex

(4) Subject to regulation 12, a person must not manufacture any coating to be applied to film referred to in paragraph (3)(b) using any substance or group of substances other than those listed in Annex II, III or IV to Directive 2002/72/EC and other than in accordance with the appropriate requirements, restrictions and specifications contained in those Annexes and in the 2009 Regulations.

(5) Substances other than those listed in Annex II may be used as colourants or adhesives in the manufacture of any film to which paragraph (3)(a) applies, provided that such film is manufactured in such a way that it does not transfer any colourant or adhesive to food in any detectable quantity.

(6) Subject to regulation 12 a person must not —

(a) sell;

(b) import; or

(c) use in the course of a business in connection with the storage, preparation, packaging, sale or service of food,

(**13**) OJ No. L167, 24.6.81, p.6