STATUTORY RULES OF NORTHERN IRELAND

2009 No. 417

FOOD

The Food (Jelly Mini-Cups) (Emergency Control) Regulations (Northern Ireland) 2009

Made - - - -	*11th December 2009*
Coming into operation	*20th January 2010*

The Department of Health, Social Services and Public Safety(**1**) makes the following Regulations in exercise of the powers conferred on it by section 2(2) of the European Communities Act 1972(**2**).

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)(**3**).

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 the following Regulations.

Citation and commencement

1. These Regulations may be cited as the Food (Jelly Mini-Cups) (Emergency Control) Regulations (Northern Ireland) 2009 and come into operation on 20th January 2010.

Interpretation

2.—(1) In these Regulations—

"commercial operation" does not include exporting;

"the Commission Decision" means Commission Decision 2004/374/EC suspending the placing on the market and import of jelly mini-cups containing the food additives E400, E401,

(**1**) Formerly the Department of Health and Social Services; see S.I. 1999/283 (N.I.1) Article 3(6)
(**2**) 1972 c.68
(**3**) S.I. 2003/2901
(**4**) OJ No. L31, 1.2.2002, as 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)

E402, E403, E404, E405, E406, E407, E407a, E410, E412, E413, E414, E415, E417 and/or E418(**5**);

"controlled jelly mini-cups" means any jelly mini-cups which contain any of the relevant food additives and which are intended for human consumption;

"the Order" means the Food Safety (Northern Ireland) Order 1991(**6**) and, save where otherwise indicated, any expression used both in these Regulations and in the Order has the same meaning as in the Order; and

"the relevant food additives" means the food additives E400: alginic acid; E401: sodium alginate; E402: potassium alginate; E403: ammonium alginate; E404: calcium alginate; E405: propane 1,2-diol alginate; E406: agar; E407: carrageenan; E407a: processed euchema seaweed; E410: locust bean gum; E412: guar gum; E413: tragacanth; E414: acacia gum; E415: xanthan gum; E417: tara gum and E418: gellan gum.

(2) Any term used both in these Regulations and in the Commission Decision has the same meaning as in the Commission Decision.

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

Prohibitions

3.—(1) A person shall not carry out any commercial operation with respect to any controlled jelly mini-cups.

(2) For the purposes of paragraph (1), any jelly mini-cups which contain any of the relevant food additives shall be presumed until the contrary is proved to be controlled jelly mini-cups.

(3) A person shall not use any of the relevant food additives in the manufacture of any jelly mini-cups which are intended for human consumption.

(4) For the purposes of paragraph (3), any jelly mini-cups shall be presumed until the contrary is proved to be intended for human consumption.

(5) Any person who knowingly contravenes paragraph (1) or (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding three months or to both.

Enforcement

4.—(1) Each district council shall enforce and execute these Regulations within its district.

(2) For the purposes of enabling a district council to carry out its duty of executing and enforcing these Regulations, an authorised officer of that council shall be subject to the same obligations as regards the procurement of samples under Article 29 of the Order as are imposed on an authorised officer by regulations 6 to 8 of the Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991(**8**) (in these Regulations referred to as "the 1991 Regulations"), with the modification that any reference in those Regulations to Article 29 of the Order shall be deemed to be a reference to that Article as applied for the purposes of these Regulations by regulation 5(5).

(3) Each district council shall give such assistance and information to the Department of Health, Social Services and Public Safety and the Food Standards Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

(**5**) OJ No. L118, 23.4.2004, p.70
(**6**) 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, S.R. 2004 No. 482 and S.R. 2004 No. 505
(**7**) 1954 c.33 (N.I.)
(**8**) S.R 1991 No.198, to which there are amendments not relevant to these Regulations

Application etc. of various provisions of the Order

5.—(1) The following provisions of the Order apply for the purposes of these Regulations with the modification that any reference in those provisions to the Order or Part thereof shall be construed for the purposes of these Regulations as a reference to these Regulations—

(a) Articles 2(4) (extended meaning of "sale" etc.) and 3 (application to food offered as prizes etc.);

(b) Article 19 (offences due to fault of another person);

(c) Article 20 (defence of due diligence)(**9**), with the further modifications that—

(i) paragraphs (2) to (4) shall apply in relation to an offence under regulation 3(1) and (3) as they apply to an offence under Article 13 or 14, and

(ii) in relation to an offence under regulation 3(1), the references to "sale" in paragraph (4)(b) are deemed to include references to the carrying out of any commercial operation.

(d) Article 30 (analysis etc. of samples) with the further modifications that—

(i) the reference to "Article 29" in paragraph (1) shall be deemed to be a reference to that Article as applied by regulation 5(5), and

(ii) in the definition of "sample" in paragraph (9) the reference to "regulations under Article 32" shall be deemed to be a reference to regulation 4(2);

(e) Article 33 (powers of entry);

(f) Article 34(1) (obstruction etc. of officers);

(g) Article 34(2), with the further modification that the reference to "any such requirement as is mentioned in paragraph (1)(b)" shall be deemed to be a reference to any such requirement as is mentioned in Article 34(1)(b) as applied by sub–paragraph (f);

(h) Article 36(1) (punishment of offences), in so far as it relates to offences under Article 34(1) as applied by sub–paragraph(f); and

(i) Article 36(2) and (3)(**10**), in so far as it relates to offences under Article 34(2) as applied by sub–paragraph (g).

(2) Subject to paragraph (3), Article 8 of the Order (inspection and seizure of suspected food) applies for the purposes of these Regulations as if it read as follows—

"**8.**—(1) An authorised officer of a district council may at all reasonable times inspect any jelly mini-cups which—

(a) have been sold or are offered or exposed for sale; or

(b) are in the possession of, or have been deposited with or consigned to, any person for the purpose of sale or of preparation for sale.

(2) Paragraphs (3) to (8) apply where, whether or not on an inspection carried out under paragraph (1), it appears to an authorised officer that—

(a) any person has carried out commercial operations with respect to controlled jelly mini-cups, in contravention of regulation 3(1) of the Food (Jelly Mini-Cups) (Emergency Control) Regulations (Northern Ireland) 2009; or

(b) any person has used any of the relevant food additives in the manufacture of any jelly mini-cups which are intended for human consumption, in contravention of regulation 3(3) of those Regulations.

(**9**) Article 20 was amended by S.R 2004 No.505

(**10**) Article 36(3) was amended by S.R. 2004 No. 505