STATUTORY RULES OF NORTHERN IRELAND

2009 No. 416

FOOD

The Food Additives 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 by Articles 15(1)(a), (e) and (f), 16(1) and (2), 25(1) and (3), and 47(2) of the Food Safety (Northern Ireland) Order 1991(**2**), and 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 any reference to an Annex to an EU instrument that is specified in regulation 2(5) to be construed as a reference to that Annex as amended from time to time.

In accordance with Article 47(3A) of that Order, 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.

Citation and commencement

1. These Regulations may be cited as the Food Additives Regulations (Northern Ireland) 2009 and come into operation on 20th January 2010.

Interpretation

2.—(1) In 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)

(**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 /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)

"acid" means any substance which increases the acidity of a food and/or imparts a sour taste to it;

"acidity regulator" means any substance which alters or controls the acidity or alkalinity of a food;

"anti-caking agent" means any substance which reduces the tendency of individual particles of a food to adhere to each other;

"anti-foaming agent" means any substance which prevents or reduces foaming;

"antioxidant" means any substance which prolongs the shelf-life of a food by protecting it against deterioration caused by oxidation, including fat rancidity and colour changes;

"bulking agent" means any substance which contributes to the volume of a food without contributing significantly to its available energy value;

"carrier" and "carrier solvent" have the meanings respectively given to them in Directive 95/2;

"colour" has the meaning given to it in Directive 94/36;

"Directive 88/388" means Council Directive 88/388/EEC on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production(**5**);

"Directive 94/35" means European Parliament and Council Directive 94/35/EC on sweeteners for use in foodstuffs(**6**);

"Directive 94/36" means European Parliament and Council Directive 94/36/EC on colours for use in foodstuffs(**7**);

"Directive 95/2" means European Parliament and Council Directive 95/2/EC on food additives other than colours and sweeteners(**8**);

"Directive 08/60" means Commission Directive 2008/60/EC laying down specific purity criteria concerning sweeteners for use in foodstuffs(**9**);

"Directive 08/84" means Commission Directive 2008/84/EC laying down specific purity criteria on food additives other than colours and sweeteners(**10**);

"Directive 08/128" means Commission Directive 2008/128/EC laying down specific purity criteria concerning colours for use in foodstuffs(**11**);

"Directive 09/39" means Directive 2009/39/EC of the European Parliament and of the Council on foodstuffs for particular nutritional uses (recast)(**12**);

"emulsifier" means any substance which makes it possible to form or maintain a homogenous mixture of two or more immiscible phases, such as oil and water, in a food;

"emulsifying salt" means any substance which converts proteins contained in cheese into a dispersed form, thereby bringing about homogenous distribution of fat and other components;

(**5**) OJ No. L184, 15.7.1988, p.61, as last amended by Regulation (EC) No. 1882/2003 of the European Parliament and of the Council adapting to Council Decision 1999/468/EC the provisions relating to committees which assist the Commission in the exercise of its implementing powers laid down in instruments subject to the procedure referred to in Article 251 of the EC Treaty (OJ No. L284, 31.10.2003, p.1)

(**6**) OJ No. L237, 10.9.1994, p.3, as last amended by Directive 2006/52/EC of the European Parliament and of the Council amending Directive 95/2/EC on food additives other than colours and sweeteners and Directive 94/35/EC on sweeteners for use in foodstuffs. (OJ No. L204, 20.7.2006, p.10)

(**7**) OJ No. L237, 10.9.1994, p.13

(**8**) OJ No. L61, 18.3.1995, p.1, as read with the Corrigendum at OJ No. L248, 14.10.1995, p.60 and as last amended by Directive 2006/52/EC

(**9**) OJ No. L158, 18.6.2008, p.1

(**10**) OJ No. L253, 20.9.2008, p.1, amended by Commission Directive 2009/10/EC amending Directive 2008/84/EC laying down specific purity criteria on food additives other than colours and sweeteners (OJ No. L44, 14.2.2009, p.62)

(**11**) OJ No. L6, 10.1.2009, p.20

(**12**) OJ No. L124, 20.05.2009, p.21

"firming agent" means any substance which makes or keeps tissues of fruit or vegetables firm or crisp or which interacts with a gelling agent to produce or strengthen a gel;

"flavour enhancer" means any substance which enhances the existing taste and/or odour of a food;

"flavouring" has the meaning that it bears in Article 1.2 of Directive 88/388;

"flour treatment agent" means a substance added to flour or dough to improve its baking quality, but does not include any emulsifier;

"foaming agent" means any substance which makes it possible to form a homogenous dispersion of a gaseous phase in a liquid or solid food;

"food" means food sold, or intended for sale, for human consumption and, for the purposes of regulation 16 and in regulation 17, includes a colour, a sweetener and a food additive;

"food additive"—

(a) subject to paragraphs (b) and (c), means any substance, whether or not it has nutritive value, that is not normally consumed as a food in itself or used as a characteristic ingredient of food, and which, if added intentionally for a technological purpose to food in its manufacture, processing, preparation, treatment, packaging, transport or storage, results, or may reasonably be expected to result, in the substance or its by-products becoming directly or indirectly a component of the food concerned;

(b) in the definition of "food" and for the purposes of regulations 8 to 10, 16 and 17, includes a carrier or carrier solvent; and

(c) for the purposes of regulations 8 to 10, does not include—

  (i) any substance used for the treatment of drinking water as provided for in Council Directive 98/83/EC on the quality of water intended for human consumption(**13**),

  (ii) any product containing pectin and derived from dried apple pomace or peel of citrus fruit, or from a mixture of both, by the action of dilute acid followed by partial neutralisation with sodium or potassium salts (liquid pectin),

  (iii) chewing gum bases,

  (iv) white or yellow dextrin, roasted or dextrinated starch, starch modified by acid or alkali treatment, bleached starch, physically modified starch and starch treated by amylolitic enzymes,

  (v) ammonium chloride,

  (vi) blood plasma, edible gelatine, protein hydrolysates and their salts, milk protein and gluten,

  (vii) amino acids and their salts (other than glumatic acid, glycine, cysteine and cystine and their salts) having no additive function,

  (viii) caseinates and casein, and

  (ix) inulin;

"food for infants or young children" means food covered by Article 1.1, 2 and 3(c) of Directive 09/39, but also includes any food for infants or young children who are not in good health;

"gelling agent" means any substance which gives a food texture through the formation of a gel;

"glazing agent" means any substance which, when applied to the external surface of a food, imparts a shiny appearance or provides a protective coating, and includes lubricants;

(**13**) OJ No. L330, 5.12.1998, p.32

"humectant" means any substance which prevents a food from drying out by counteracting the effect of an atmosphere having a low degree of humidity, or which promotes the dissolution of a powder in an aqueous medium;

"infants" means children under the age of one year;

"miscellaneous additive" means any food additive which is used or intended to be used primarily as an acid, acidity regulator, anti-caking agent, anti-foaming agent, antioxidant, bulking agent, carrier, carrier solvent, emulsifier, emulsifying salt, firming agent, flavour enhancer, flour treatment agent, foaming agent, gelling agent, glazing agent, humectant, modified starch, packaging gas, preservative, propellant, raising agent, sequestrant, stabiliser or thickener, but does not include any processing aid or any enzyme except invertase or lysozyme;

"modified starch" means any substance obtained by one or more chemical treatments of edible starch, which may have undergone a physical or enzymatic treatment, and may be acid or alkali thinned or bleached;

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

"packaging gas" means any gas, other than air, which is introduced into a container before, during or after the placing of a food in that container;

"permitted colour" means any colour listed in Annex I to Directive 94/36 which satisfies the specific purity criteria for that colour set out in the Annex to Directive 08/128;

"permitted miscellaneous additive" means any miscellaneous additive listed in Annex I, III, IV or V of Directive 95/2 which satisfies the purity criteria (if any) for that additive;

"permitted sweetener" means any sweetener specified in the second column of the Annex to Directive 94/35 which satisfies the specific purity criteria for that sweetener set out in the Annex to Directive 08/60;

"placing on the market" has the meaning given to it in Article 3.8 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;

"preservative" means any substance which prolongs the shelf-life of a food by protecting it against deterioration caused by micro-organisms;

"processing aid" means any substance not consumed as a food by itself, which is intentionally used in the processing of raw materials, foods or their ingredients to fulfil a certain technological purpose during treatment or processing and which may result in the unintentional but technically unavoidable presence of residues of the substance or its derivatives in the final product, but only if those residues do not present any health risk and do not have any technological effect on the finished product;

"propellant" means any gas, other than air, which expels a food from a container;

"purity criteria", in relation to a miscellaneous additive, means the purity criteria set out in relation to that additive in Annex I to Directive 08/84/EC;

"raising agent" means any substance or combination of substances which liberates gas and thereby increases the volume of a dough or a batter;

"Regulation 1333/2008" means Regulation (EC) No.1333/2008 of the European Parliament and of the Council on food additives(**14**);

"relevant food additive" means any miscellaneous additive, colour or sweetener, or an enzyme which is not acting as a processing aid;

(**14**) OJ No. L354, 31.12.2008, p.16

"sell" includes possess for sale, and offer, expose or advertise for sale;

"sequestrant" means any substance which forms a chemical complex with metallic ions;

"specified permitted colour" means any permitted colour other than—

(a) E123 Amaranth;

(b) E127 Erythrosine;

(c) E128 Red 2G;

(d) E154 Brown FK;

(e) E160b Annatto, bixin, norbixin;

(f) E161g Canthaxanthin;

(g) E173 Aluminium; and

(h) E180 Litholrubine BK;

"specified Regulation 1333/2008 provision" means any provision of Regulation 1333/2008 that is specified in the first column of Schedule 1 and whose subject-matter is described in the second column of Schedule 1;

"stabiliser" has the meaning given to it in Directive 95/2;

"sweetener" means any food additive which is used or intended to be used—

(a) to impart a sweet taste to food; or

(b) as a table-top sweetener;

"thickener" means any substance which increases the viscosity of a food; and

"young children" means children aged between one and three years.

(2) Other expressions used in these Regulations and in Directive 94/35, 94/36 or 95/2 have, in so far as the context admits, the same meaning as they bear in the Directive concerned.

(3) Any reference in these Regulations to—

(a) a maximum level of permitted colour in or on a food is a reference to the maximum amount, in milligrams, of colouring principle contained in that permitted colour per kilogram or, as the case may be, per litre, of food which is ready to eat and which has been prepared according to any instructions for use;

(b) a maximum level of permitted miscellaneous additive in or on a food, or in respect of a food additive, is a reference to the maximum level of that permitted miscellaneous additive in or on the food, or in respect of the food additive, as sold, unless otherwise indicated; or

(c) *quantum satis,* means, in relation to the use of permitted colours or permitted miscellaneous additives in or on food, that no maximum level of permitted colour or permitted miscellaneous additive has been laid down for use in or on certain food but that a permitted colour or, permitted miscellaneous additive may be used in or on the food in accordance with good manufacturing practice at a level not higher than is necessary to achieve the intended purpose and only if such use does not mislead the consumer.

(4) Any reference to an EU instrument is a reference to it as amended, extended or applied at the date of making of these Regulations but any reference to an Annex to an EU instrument that is specified in paragraph (5) is a reference to that Annex as for the time being amended.

(5) The EU instruments are Directive 94/35, Directive 95/2 and Regulation 1333/2008.

(6) The Interpretation Act (Northern Ireland) 1954(**15**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

(**15**) 1954 c.33 (N.I.)