STATUTORY RULES OF NORTHERN IRELAND

2009 No. 258

FOOD

The Food Irradiation Regulations (Northern Ireland) 2009

Made - - - -	*29th June 2009*
Coming into operation	*31st July 2009*

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(1) and (3), 16(1), 17(1)(c), 18(1)(b), 25, 26(3) and 47(2) of, and paragraphs 1 and 4(b) of Schedule 1 to, the Food Safety (Northern Ireland) Order 1991(**2**).

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

Citation and commencement

1. These Regulations may be cited as the Food Irradiation Regulations (Northern Ireland) 2009 and come into operation on 31st July 2009.

Scope

2. These Regulations do not apply to—

(a) irradiation by measuring or inspection devices at a maximum level of—

(i) 10MeV in the case of X-rays;

(ii) 14MeV in the case of neutrons; or

(iii) 5MeV in other cases,

(**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**) OJ No. L31, 1.2.2002, p.1, as last amended as by Commission Regulation (EC) No. 202/2008 amending Regulation (EC) No. 178/2002 of the European Parliament and of the Council as regards the number and names of the Scientific Panels of the European Food Safety Authority (OJ No. L60, 5.3.2008, p.17)

where the dose of ionising radiation absorbed does not exceed 0.01Gy in the case of inspection devices which utilise neutrons and 0.5 Gy in other cases; or

(b) irradiation of food prepared under medical supervision for patients requiring sterile diets.

Interpretation

3.—(1) In these Regulations—

"the Agency" means the Food Standards Agency;

"approval" includes a licence;

"import" means to introduce from another member State or from a country outside the European Community;

"ionising radiation" means any gamma rays, X rays or corpuscular radiations which are capable of producing ions either directly or indirectly;

"irradiated" means treated by ionising radiation;

"licence" save in regulation 7(a)(ii)(bb) means a licence granted by the Agency in accordance with Schedule 2 to a person and a facility to irradiate food;

"member State" means a member State of the European Communities;

"official reference number" in relation to a facility in a member State means the reference number allocated by the member State in connection with its approval as an irradiation facility (being the number shown for it in the list in Schedule 3);

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

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

(2) For the purposes of these Regulations—

(a) "properly irradiated food" means food which—

(i) was either irradiated alone or as part of a batch of food in which each item was food which fell within the same permitted category of food; and

(ii) has not been over-irradiated;

(b) food falls within a permitted category of food when (excluding the weight of any added water) no less than 98 per cent of it by weight falls within that category, and "item", in relation to a batch of food, means each item within that batch intended to be capable of being sold individually;

(c) the permitted categories of food are—

(i) fruit;

(ii) vegetables;

(iii) cereals;

(iv) bulbs and tubers;

(v) dried aromatic herbs, spices and vegetable seasonings;

(vi) fish and shellfish; and

(vii) poultry;

(d) in the permitted categories of food—

(i) "fruit" includes fungi, tomatoes and rhubarb;

(ii) "vegetables" excludes fruit, cereals, bulbs and tubers and dried aromatic herbs, spices and vegetable seasonings but includes pulses;

(iii) "bulbs and tubers" means potatoes, yams, onions, shallots and garlic;

(iv) "fish and shellfish" includes eels, crustaceans and molluscs; and

(v) "poultry" means domestic fowls, geese, ducks, guinea fowls, pigeons, quails and turkeys;

(e) food has been over-irradiated either when the overall average dose of ionising radiation absorbed by it, measured in accordance with Schedule 1, exceeds, in the case of—

(i) fruit, 2 kGy;

(ii) vegetables, 1 kGy;

(iii) cereals, 1 kGy;

(iv) bulbs and tubers, 0.2 kGy;

(v) dried aromatic herbs, spices and vegetable seasonings, 10 kGy;

(vi) fish and shellfish, 3 kGy; or

(vii) poultry, 7 kGy,

or in the circumstances described in paragraph (3).

(3) The circumstances are that the maximum dose of ionising radiation absorbed by the food, or by any food in the same batch, measured in accordance with Schedule 1, is—

(a) more than three times the minimum dose absorbed by it; or

(b) more than 1.5 times the overall average dose specified for the food in paragraph (2)(e).

Prohibition on treatment without a licence

4.—(1) A person shall not in the preparation of any food irradiate it or any part of it unless—

(a) that person has been licensed;

(b) it is in a suitably wholesome state; and

(c) it is irradiated in accordance with these Regulations and any conditions of the licence.

(2) Schedule 2 shall have effect in relation to licences.

Restrictions on importation

5.—(1) A person shall not import into Northern Ireland for the purpose of sale any irradiated food unless—

(a) it falls within a permitted category of food;

(b) it has been irradiated in one of the facilities listed in the Table in—

(i) Schedule 3, being in each case a facility in a member State approved for the irradiation of foods and food ingredients by the member State concerned; or

(ii) Schedule 4, being in each case a facility in a country outside the European Community and approved by the Community;

(c) it is properly irradiated food; and

(d) the requirements of paragraph (2) or (3) are complied with.

(2) Where the food was irradiated in another member State, it must be accompanied by documents containing—

(a) either the name and address of the facility which carried out the irradiation, or its official reference number; and

(b) the information specified in paragraph 9(1)(a) to (d) and (2)(d) of Part 3 of Schedule 2.

(3) Where the food was irradiated outside the European Community—

(a) it is accompanied by documents containing the name and address of the facility in which it was irradiated and the information specified in paragraph 9(1) of Part 3 of Schedule 2; and

(b) in the case of food other than dried aromatic herbs, spices or vegetable seasonings—

(i) it was irradiated by a person approved, under a reference by which the approval can be identified, by a competent authority in the country in which it was irradiated;

(ii) the approval requires the method of measurement specified in Schedule 1 relating to food to which the approval relates; and

(iii) the operation of the legislation in force in that country relating to the irradiation of food protects human health to an extent not less than human health is protected by the operation of these Regulations; and

(c) it complies with the conditions which apply to the food.

(4) This regulation applies to food which has (as well as food which has not) become an ingredient of other food.

(5) In paragraph (3)(c) the expression "the conditions which apply to the food" is to be construed in accordance with the expression "the conditions which apply to those foodstuffs" in Article 9(1) of Directive 1999/2/EC of the European Parliament and of the Council on the approximation of the laws of the Member States concerning foods and food ingredients treated with ionising radiation(**4**) as amended.

Restriction on storage or transport

6.—(1) A person shall not store or transport for the purpose of sale any irradiated food unless—

(a) that person has been licensed in relation to the food; or

(b) that person has not been licensed in relation to the food and—

(i) where the food has been imported into Northern Ireland, it is accompanied by the documents, or copies of the documents, required in relation to it by regulation 5(2) or 5(3)(a); or

(ii) where the irradiation took place in the United Kingdom, it is accompanied by documents containing a statement that the food has been irradiated and a document or copy containing the information specified in paragraph 9(1)(a) to (d) and (2) of Part 3 of Schedule 2.

(2) This regulation applies to food which has (as well as food which has not) become an ingredient of other food.

Restriction on sale

7. A person shall not sell food which, or any part of which, has been irradiated unless—

(a) either—

(i) the irradiation took place in Northern Ireland and regulation 4 and Schedule 2 and any conditions of the licence were complied with; or

(ii) the irradiation took place in England, Scotland or Wales and

(aa) provisions having effect there, corresponding to regulation 4 and Schedule 2; and

(**4**) OJ No. L66, 13.3.1999, p.16 as amended by Regulation (EC) No. 1882/2003 (OJ No. L284, 31.10.2003, p.1) and Regulation (EC) No. 1137/2008 (OJ No. L311, 21.11.2008, p.1)

(bb) any conditions of a licence to irradiate food issued there,

were complied with; or

(iii) the food was imported into Northern Ireland and regulation 5 was complied with; and

(b) where it was stored or transported, regulation 6 was complied with.

Documentation for food not ready for a final sale

8.—(1) A person shall not import into Northern Ireland, store or transport for the purpose of sale or sell irradiated food, or food containing an irradiated ingredient, which is not ready for delivery to the ultimate consumer or catering establishments unless the documents which accompany the food—

(a) apply the word "irradiated" or the words "treated with ionising radiation" to the food or the ingredient, as the case may be; and

(b) include either the name and address of the facility which carried out the irradiation, or its official reference number.

(2) In this regulation—

(a) "catering establishment" means a restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed or mobile stall) where, in the course of a business, food is prepared for delivery to the ultimate consumer and is ready for consumption without further preparation;

(b) "ultimate consumer" means any person who buys otherwise than—

(i) for the purpose of resale;

(ii) for the purposes of a catering establishment; or

(iii) for the purposes of a manufacturing business.

Enforcement

9.—(1) The Agency shall enforce the provisions of these Regulations in so far as they fall to be observed by a licensee.

(2) The Agency or each district council within its district shall each enforce the provisions of regulation 4 in so far as they fall to be observed by any person other than a licensee.

(3) Each district council shall enforce within its district the provisions of these Regulations save in so far as they fall to be enforced under paragraph (1) or (2).

(4) Each authority concerned in the administration of these Regulations shall give to each other authority so concerned such assistance and information as that other authority may reasonably require for the purposes of its duties under these Regulations.

Offences and penalties

10.—(1) Any person who contravenes any of the provisions of these Regulations or, for the purposes of these Regulations, makes any false statement or uses any document containing a false statement either recklessly or knowing it to be false, is guilty of an offence and is liable—

(a) on summary conviction to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding six months or both; and

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or both.

(2) Any licensee who contravenes or fails to comply with any condition of the licence is guilty of an offence and is liable—