STATUTORY RULES OF NORTHERN IRELAND

2009 No. 56

FOOD

The Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 2009

Made - - - - 18th February 2009

Coming into operation 13th March 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(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 references to the Annexes to the Community instrument specified in regulation 2(6) to be construed as references to those Annexes 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)

(**4**) OJ No. L31, 1.2.2002, p.1.). That Regulation was last amended by Commission Regulation (EC) No. 202/2008 (OJ No. L60, 5.2.2008, p.17)

PART 1

Preliminary

Citation and commencement

1. These Regulations may be cited as the Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 2009 and come into operation on 13th March 2009.

Interpretation

2.—(1) In these Regulations —

"authorised officer" means any person who is authorised in writing by a district council (whether or not that person is an officer of that district council) to act in matters arising under these Regulations;

"BADGE" has the meaning given in Article 1(1)(a) of Regulation 1895/2005;

"BFDGE" has the meaning given in Article 1(1)(b) of Regulation 1895/2005;

"business" is to be construed in accordance with Article 2(2) of the Order;

"capable" means capable as established under regulation 13;

"Directive 82/711" means Council Directive 82/711/EEC laying down the basic rules necessary for testing migration of the constituents of plastic materials and articles intended to come into contact with foodstuffs(**5**);

"Directive 85/572" means Council Directive 85/572/EEC laying down the list of simulants to be used for testing migration of constituents of plastic materials and articles intended to come into contact with foodstuffs(**6**);

"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(**7**);

"Directive 89/107" means Council Directive 89/107/EEC on the approximation of the laws of the Member States concerning food additives authorised in foodstuffs intended for human consumption(**8**);

"the Directive" means Commission Directive 2002/72/EC relating to plastic materials and articles intended to come into contact with foodstuffs (**9**);

"the Purity Directives" means Commission Directive 2008/60/EC laying down specific purity criteria concerning sweeteners for use in foodstuffs(**10**), Commission Directive 2008/128/EC laying down purity criteria concerning colours for use in foodstuffs(**11**) and Commission Directive 2008/84/EC laying down specific purity criteria for food additives other than colours or sweeteners(**12**);

"EEA State" means a Member State (other than the United Kingdom), Norway, Iceland and Liechtenstein;

(**5**) OJ No. L297, 23.10.1982, p.26. This was last amended by Commission Directive 97/48/EC (OJ No. L222, 12.8.1997, p.10)
(**6**) OJ No. L372, 31.12.1985, p.14. This was last amended by Commission Directive 2007/19/EC (OJ No. L97, 12.4.2007 p.50)
(**7**) OJ No. L184, 15.7.1988, p.61
(**8**) OJ No. L40, 11.2.1989, p. 27
(**9**) OJ No. L220, 15.8.2002, p.18. This was 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 (published in revised and corrected form in OJ No. L97, 12.4.2007, p.50), and 2008/39/EC (OJ No. L63, 7.3.2008, p.6)
(**10**) OJ No. L158, 18.6.2008, p.17
(**11**) OJ No. L6, 10.1.2009, p.20
(**12**) OJ No. L253, 20.9.2008, p.1

"EFSA" means the European Food Safety Authority;

"fatty foods" means foods for which, in migration testing, simulant D is specified in Directive 85/572/EEC;

"food" is to be construed in accordance with Article 15(5) of the Order;

"good technical quality" means good technical quality as regards the purity criteria;

"handling of food" means use in connection with the storage, preparation, packaging, sale or serving of food;

"import" means import in the course of a business;

"infants" means children under the age of twelve months;

"material or article" means a material or article falling within the definition of materials and articles in Article 1(2) of Regulation 1895/2005;

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

"monomer" means any substance that is included for the purposes of the Directive among monomers and other starting substances;

"NOGE" has the meaning given in Article 1(1)(c) of Regulation 1895/2005;

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

"plastic functional barrier" means a barrier consisting of one or more layers of plastics which ensures that the finished material or article complies with Article 3 of Regulation 1935/2004 and with the Directive;

"plastic layers or coatings" means plastic layers or plastic coatings forming gaskets in lids that together are composed of two or more layers of different types of materials;

"plastic material or article" means anything which for the purposes of the Directive is included among those plastic materials and articles and parts thereof to which the Directive applies;

"plastic multi-layer material or article" means a plastic material or article composed of two or more layers of materials each consisting exclusively of plastics, which are bound together by means of adhesives or other means;

"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(**13**);

"Regulation 1895/2005" means Commission Regulation (EC) No 1895/2005 on the restriction of use of certain epoxy derivatives in materials and articles intended to come into contact with food(**14**);

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

"the 2007 Regulations" means the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2007(**15**);

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

(2) For the purposes of these Regulations the supply otherwise than on sale, in the course of a business, of any material or article is deemed to be a sale.

(3) Any other expression used in these Regulations and in the Directive, Directive 82/711, Directive 85/572 or Regulation 1895/2005 bears the same meaning in these Regulations as it bears in that Directive or Regulation.

(4) Any reference to a numbered Annex is a reference to that Annex to the Directive.

(**13**) OJ No. L338, 13.11.2004, p.4
(**14**) OJ No. L302, 19.11.2005, p.28
(**15**) S.R. 2007 No. 434, as amended by S.R. 2008 No. 167 and these Regulations

(5) Subject to paragraph (6), any reference to a Community instrument is a reference to it as amended, modified or otherwise adapted at the date of making of these Regulations.

(6) Any reference to an Annex to the Directive is a reference to that Annex as amended from time to time.

(7) The Interpretation Act (Northern Ireland) 1954(**16**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

PART 2

Requirements for Materials and Articles

Restriction on the use, sale or import of plastic materials and articles

3.—(1) A person shall not —

(a) use for the handling of food in the course of a business;

(b) sell for the purpose of handling of food; or

(c) import from anywhere other than an EEA State for the purpose of handling of food,

a plastic material or article which fails to meet the required standard.

(2) For the purposes of this regulation a plastic material or article fails to meet the required standard if —

(a) it has been manufactured —

(i) with a monomer which is not a permitted monomer as described in regulation 4(2), or

(ii) with an additive which is not a permitted additive as described in regulation 5(2); or

(b) it does not meet the required standards set out in regulation 6, 7, 8, 9, 10 or 11,

but a plastic material or article meets the required standard if it meets the applicable conditions set out in Schedule 5 (transitional arrangements).

Restriction on the use of monomers in the manufacture of plastic materials and articles

4.—(1) Subject to paragraphs (3), (4) and (5), a person shall not use any monomer other than a permitted monomer in the manufacture of any plastic material or article.

(2) A permitted monomer is any monomer which is —

(a) of good technical quality;

(b) identified by PM/REF No, CAS No (if any) and name in columns 1, 2 and 3 respectively of Sections A or B of Annex II; and

(c) used in accordance with any restrictions and specifications for that monomer set out or referred to in column 4 of those Sections.

(3) Paragraph (1) does not apply to the use of a monomer in the manufacture of any —

(a) surface coatings obtained from resinous or polymerised products in liquid, powder or dispersion form, including but not limited to varnishes, lacquers and paints;

(b) epoxy resins;

(c) adhesives and adhesion promoters; or

(d) printing inks.

(**16**) 1954 c.33 (NI)

(4) Paragraph (1) shall not be taken to prohibit the manufacture of any plastic material or article with any substance if the substance in question is a mixture which falls within paragraph 3(c) (relating to mixtures of authorised substances) of Annex II and is of good technical quality.

(5) In any proceedings for an offence under these Regulations where it is alleged that a plastic material or article does not comply with paragraph (1) because it was manufactured with any monomer (whether or not of good technical quality) other than one mentioned in paragraph (2)(b) it shall be a defence for the person accused to prove that each such monomer —

(a) is present in the finished plastic material as an impurity, a reaction intermediate or a decomposition product which falls within paragraph 3(a) of Annex II, or

(b) is an oligomer or a natural or synthetic macromolecular substance or a mixture thereof which falls within paragraph 3(b) of that Annex,

and is of good technical quality.

(6) Schedule 1 has effect to supplement this regulation.

Restriction on the use of additives in the manufacture of plastic materials and articles

5.—(1) Subject to paragraph (3) a person shall not use in the manufacture of any plastic material or article any additive other than a permitted additive.

(2) A permitted additive is —

(a) an additive identified by PM/REF No, CAS No (if any) and name in columns 1, 2 and 3 respectively of Section A or B of Annex III which —

(i) is of good technical quality, and

(ii) is used in accordance with any restrictions and specifications for that additive set out in the corresponding entry in column 4 of Section A or B of that Annex;

(b) any food additive authorised by Directive 89/107 or any flavouring authorised by Directive 88/388 that does not migrate into food —

(i) in a quantity that has a technological function in the final food product, or

(ii) where the food is of a type for which the use of any such food additive or flavouring is so authorised, in quantities exceeding the limits provided for in Directive 89/107 or Directive 88/388 as appropriate, or in Annex III, whichever is the lower;

(c) any additive where that additive, at the time it is used under paragraph (1), appears in the provisional list mentioned in Article 4a(3) of the Directive and otherwise complies with the requirements of national law in Northern Ireland;

(d) any additive not mentioned in sub-paragraphs (a) to (c) that is used —

(i) in the manufacture of plastic layers or coatings, or

(ii) as a polymerisation production aid not intended to remain in the finished article

and which otherwise complies with the requirements of national law in Northern Ireland; or

(e) before 1st January 2010, any other additive used in accordance with the requirements of the Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 2008(**17**) and which, but for their revocation, would have been permitted by those Regulations.

(3) In any proceedings for an offence under these Regulations where it is alleged that the commission of the offence is due to the manufacture of a plastic material or article with any additive identified in Section A or B of Annex III or in the provisional list mentioned in Article 4a(3) of the

(**17**) S.R. 2008 No. 167 as amended by S.R. 2008 No. 271