STATUTORY RULES OF NORTHERN IRELAND

# 2008 No. 405

# FOOD

## The Infant Formula and Follow-on Formula (Amendment) Regulations (Northern Ireland) 2008

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| *Made - - - -* | *2nd October 2008* |
| *Coming into operation* | *4th November 2008* |

The Department of Health, Social Services and Public Safety(**1**) makes the following Regulations in exercise of the powers conferred by Articles 15(1)(e), 16(1), 25(1)(a) and (3) and 47(2) of the Food Safety (Northern Ireland) Order 1991(**2**).

In accordance with Article 47(3A) of the Food Safety (Northern Ireland) Order 1991, the Department of Health, Social Services and Public Safety 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 and evaluation of these Regulations.

### Citation and commencement

**1.** These Regulations—

(a) may be cited as the Infant Formula and Follow-on Formula (Amendment) Regulations (Northern Ireland) 2008; and

(b) come into operation on 4th November 2008.

### Amendment of the Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007

**2.**—(1) The Infant Formula and Follow-on Formula Regulations (Northern Ireland) 2007(**4**) are amended in accordance with paragraphs (2) to (6).

(**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 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)

(**4**) S.R. 2007 No. 506

(2) For the provisions of regulation 3 (prohibition on the marketing of infant formula or follow-on formula unless certain conditions are met) substitute —

"(1) A person shall not market infant formula which contravenes regulation 5, 6, 8, 10, 11, 12, 14(1), (2) or (3), 15, 17, 19 or 20(1).

(2) A person shall not market follow-on formula which contravenes regulation 5, 7, 9, 10, 11, 12, 14(1), (2) or (3), 16, 18, 19 or 20(2).".

(3) In regulation 20 (presentation (infant formula and follow-on formula))—

(a) for paragraph (1) substitute —

"(1) The presentation of an infant formula shall comply with the provisions of regulations 17(1)(e), (2), (3) and (4) and 19"; and

(b) for paragraph (2) substitute —

"(2) The presentation of a follow-on formula shall comply with the provisions of regulations 18(2) and 19.".

(4) For regulation 26(1)(a) (export of infant formula to third countries) substitute—

"(a) regulation 5, 6, 8, 10, 11, 12, 14(1), (2) or (3), 17, 19 or 20(1);".

(5) For regulation 27(a) (export of follow-on formula to third countries) substitute—

"(a) regulation 5, 7, 9, 10, 11, 12, 14(1), (2) or (3), 18, 19 or 20(2);".

(6) For regulation 31(3) (revocation and transitional arrangements) substitute—

"(3) In respect of any contravention before 1st January 2010, a person does not commit an offence under regulation 28(1) consisting of a contravention of —

(a) regulation 3(1), where—

(i) the action that would otherwise constitute the offence consists of marketing infant formula which contravenes regulation 5, 6, 8, 10, 11, 12 or 14(1), (2) or (3), and

(ii) that action does not constitute an offence under regulation 10(1) of the 1995 Regulations consisting of a contravention of regulation 2(1)(a)(i) or (ii) of those Regulations;

(b) regulation 3(1), where—

(i) the action that would otherwise constitute the offence consists of marketing infant formula which contravenes regulation 17 or 19, and

(ii) that action, had it taken place on 10th January 2008, would not have constituted an offence under regulation 10(1) of the 1995 Regulations as they then stood consisting of a contravention of regulation 2(1)a (iii) of those Regulations;

(c) regulation 3(1), where—

(i) the action that would otherwise constitute the offence consists of marketing infant formula which contravenes regulation 20(1) in so far as regulation 20(1) applies in relation to the shape, appearance and packaging of that infant formula, and

(ii) that action, had it taken place on 10th January 2008, would not have constituted an offence under regulation 10(1) of the 1995 Regulations as they then stood consisting of a contravention of regulation 2(1)(a)(iv) of those Regulations in so far as regulation 2(1)(a)(iv) applied in relation to the shape, appearance and packaging of that infant formula;

(d) regulation 3(2), where—

(i) the action that would otherwise constitute the offence consists of marketing follow-on formula which contravenes regulation 5, 7, 9, 10, 11, 12 or 14(1), (2) or (3), and

(ii) that action does not constitute an offence under regulation 10(1) of the 1995 Regulations consisting of a contravention of regulation 2(2)(a) or (b) of those Regulations;

(e) regulation 3(2), where—

(i) the action that would otherwise constitute the offence consists of marketing follow-on formula which contravenes regulation 18 or 19, and

(ii) that action, had it taken place on 10th January 2008, would not have constituted an offence under regulation 10(1) of the 1995 Regulations as they then stood consisting of a contravention of regulation 2(2)(c) of those Regulations;

(f) regulation 3(2), where—

(i) the action that would otherwise constitute the offence consists of marketing follow-on formula which contravenes regulation 20(2) in so far as regulation 20(2) applies in relation to the shape, appearance and packaging of that follow-on formula, and

(ii) that action, had it taken place on 10th January 2008, would not have constituted an offence under regulation 10(1) of the 1995 Regulations as they then stood consisting of a contravention of regulation 2(2)(d) of those Regulations in so far as regulation 2(2)(d) applied in relation to the shape, appearance and packaging of that follow-on formula;

(g) regulation 4, where the action that would otherwise constitute the offence does not constitute an offence under regulation 10(1) of the 1995 Regulations consisting of a contravention of regulation 2(1)(b)(i) or (ii) of those Regulations;

(h) regulation 4, where the action that would otherwise constitute the offence, had it taken place on 10th January 2008, would not have constituted an offence under regulation 10(1) of the 1995 Regulations as they then stood consisting of a contravention of regulation 2(1)(b)(iii) of those Regulations; or

(i) regulation 4, where the action that would otherwise constitute the offence, had it taken place on 10th January 2008, would not have constituted an offence under regulation 10(1) of the 1995 Regulations as they then stood consisting of a contravention of regulation 2(1)(b)(iv) of those Regulations in so far as regulation 2(1)(b)(iv) applied in relation to the shape, appearance and packaging of the product concerned.".

**Amendment of the Medical Food Regulations (Northern Ireland) 2000**

**3.**—(1) The Medical Food Regulations (Northern Ireland) 2000(**5**) are amended in accordance with paragraph (2).

(2) The following regulation is inserted immediately after regulation 7 (application of various provisions of the Order)—

(**5**) S.R. 2000 No. 187; the relevant amending instrument is S.R. 2007 No. 506