STATUTORY RULES OF NORTHERN IRELAND

2007 No. 419

FOOD

The Plastic Materials and Articles in Contact with Food (Lid Gaskets) Regulations (Northern Ireland) 2007

Made - - - -	*1st October 2007*
Coming into operation	*5th November 2007*

The Department of Health, Social Services and Public Safety(**1**) makes the following Regulations in exercise of the powers conferred by Articles 15(2)(c), 16(2), 25(1)(a) and (3), 32 and 47(2) of 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 and evaluation of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Plastic Materials and Articles in Contact with Food (Lid Gaskets) Regulations (Northern Ireland) 2007 and come into operation on 5th November 2007.

Interpretation

2.—(1) In these Regulations —

"the Commission Regulation" means Commission Regulation (EC) No. 372/2007 laying down transitional migration limits for plasticisers in gaskets in lids intended to come into contact with foods(**4**);

"authorised officer" means any person who is authorised in writing, either generally or specifically, by a district council to act in matters arising under 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. 1996/1633 (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 No.482 and S.R. 2004 No.505
(**3**) OJ No.L31, 1.2.2002, p.1; that Regulation was last amended by Commission Regulation (EC) No.575/2006 (OJ No.L100, 8.4.2006, p.3)
(**4**) OJ No. L92, 3.4.2007, p.9; recital 2 of the Regulation was corrected by a corrigendum, (OJ No. L97, 12.4.2007, p.70), which made a minor correction to a date forming part of the citation to an EC instrument

"import" means import in the course of a business from a place other than a Member State;

"lid" means a lid of the type mentioned in Article 1 of the Commission Regulation;

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

(2) Any other expression used in these Regulations and in the Commission Regulation has the same meaning in these Regulations as it bears in the Commission Regulation.

Enforcement

3. It shall be the duty of each district council within its district to execute and enforce these Regulations and the Commission Regulation.

Offences and penalties

4.—(1) Any person who —

(a) contravenes or fails to comply with the requirements of Article 1 of the Commission Regulation (requirements relating to lids sealed with gaskets containing certain plasticising substances);

(b) intentionally obstructs any person acting in the execution of these Regulations;

(c) without reasonable excuse, fails to give to any person acting in the execution of these Regulations or the Commission Regulation any assistance or information which that person may reasonably require; or

(d) in purported compliance with any requirement mentioned in sub-paragraph (c), knowingly or recklessly supplies information that is false or misleading in any material particular,

is guilty of an offence.

(2) Anyone convicted of an offence under these Regulations is liable —

(a) in the case of an offence under paragraph (1)(a) —

(i) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine or both;

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

(b) in the case of an offence under paragraph 1(b), (c) or (d), on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level five on the standard scale or both.

(3) Nothing in paragraph (1)(c) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

Offences due to an act or default of a third party

5. Where the commission by any person of an offence under these Regulations is due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person.

Time limit for prosecutions

6. A prosecution for an offence under these Regulations shall not be begun after the expiry of three years from the commission of the offence or one year from its discovery by the prosecution, whichever is the earlier.

Defence of due diligence

7.—(1) In any proceedings for an offence under these Regulations it shall, subject to paragraph (4), be a defence for the person accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under regulation 4(1)(a) who did not —

(a) prepare the lid in respect of which the offence is alleged to have been committed; nor

(b) import it into the United Kingdom,

shall be taken to have established the defence provided by paragraph (1) if he satisfies the requirements of paragraph (3).

(3) A person satisfies the requirements of this paragraph if he proves —

(a) that the commission of the offence was due to the act or default of some other person who was not under his control, or to reliance on information supplied by such a person;

(b) that the placing on the market of which the alleged offence consisted was not a placing on the market under his name or mark;

(c) that either —

(i) he carried out all such checks of the lid in question as were reasonable in all the circumstances, or

(ii) it was reasonable in all the circumstances for him to rely on checks carried out by the person who supplied him with the lid in question; and

(d) that he did not know and had no reason to suspect at the time the offence was committed that his act or omission would amount to an offence under regulation 4(1)(a).

(4) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, or to reliance on information supplied by another person, the person accused shall not, without leave of the court, be entitled to rely on that defence unless —

(a) at least seven clear days before the hearing; and

(b) where he has previously appeared before a court in connection with the alleged offence, before the expiration of one month from his first such appearance,

he has served on the prosecution a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

Procedure where a sample is to be analysed

8.—(1) An authorised officer who has procured a sample under Article 29 of the Order and who considers it should be analysed shall divide the sample into three parts.

(2) If the sample consists of sealed containers and opening them would, in the opinion of the authorised officer, impede a proper analysis, the authorised officer shall divide the sample into parts by putting the containers into three lots, and each lot shall be treated as being a part.

(3) The authorised officer shall —

(a) if necessary place each part in a suitable container and seal it;

(b) mark each part or container;

(c) as soon as reasonably practicable, give one part to the owner and notify him in writing that the sample will be analysed;