STATUTORY RULES OF NORTHERN IRELAND

2005 No. 356

FOOD

The Food Hygiene Regulations (Northern Ireland) 2005

Made - - - -	*28th July 2005*
Coming into operation	*1st January 2006*

The Department of Health, Social Services and Public Safety(**1**), being a Department designated(**2**) for the purposes of section 2(2) of the European Communities Act 1972(**3**) in relation to measures relating to food (including drink), including the primary production of food, in exercise of the powers conferred on it by the said section, and of all other powers enabling it in that behalf, and after consultation 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**), hereby makes the following Regulations:

PART 1

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as The Food Hygiene Regulations (Northern Ireland) 2005 and shall come into operation on 1st January 2006.

Interpretation

2.—(1) In these Regulations—

"the Agency" means the Food Standards Agency;

"authorised officer", in relation to an enforcement authority, means any person (whether or not an officer of the authority) who is authorised by them in writing, either generally or specially, to act in matters arising under the Hygiene Regulations;

(**1**) Formerly the Department of Health and Social Services; *see*S.I.1999/283 (N.I. 1), Article 3
(**2**) S.I.2003/2901
(**3**) 1972 c. 68
(**4**) O.J. No. L31, 1.2.2002, p. 1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L245, 29.9.2003, p. 4)

"the Community Regulations" means Regulation 852/2004, Regulation 853/2004 and Regulation 854/2004;

"the Department" means the Department of Health, Social Services and Public Safety;

"enforcement authority" means the authority which, by virtue of regulation 5, is responsible for enforcing and executing the Hygiene Regulations;

"the Hygiene Regulations" means these Regulations and the Community Regulations;

"the Order" means the Food Safety (Northern Ireland) Order 1991(**5**);

"premises" includes any establishment, any place, vehicle, stall or moveable structure and any ship or aircraft;

"Regulation 178/2002", "Regulation 852/2004", "Regulation 853/2004" and "Regulation 854/2004" have the meanings respectively given to them in Schedule 1; and

"specified Community provision" means any provision of the Community Regulations that is specified in column 1 of Schedule 2 and whose subject-matter is described in column 2 of that Schedule.

(2) Subject to paragraph (3), any expression other than one defined in paragraph (1) that is used both in these Regulations and in the Order has the meaning it bears in the Order.

(3) Any expression used both in these Regulations and in Regulation 178/2002 or the Community Regulations has the meaning it bears in Regulation 178/2002 or the Community Regulations.

(4) Where, apart from this paragraph, any period of less than seven days which is specified in these Regulations would include any day which is—

(a) a Saturday, a Sunday, Christmas Day or Good Friday; or

(b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971(**6**),

that shall be excluded from the period.

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

Presumptions that food is intended for human consumption

3.—(1) The following paragraphs shall apply for the purposes of these Regulations.

(2) Any food commonly used for human consumption shall, if placed on the market or offered, exposed or kept for placing on the market, be presumed, until the contrary is proved, to have been placed on the market or, as the case may be, to have been or to be intended for placing on the market for human consumption.

(3) The following, namely—

(a) any food commonly used for human consumption which is found on premises used for the preparation, storage, or placing on the market of that food; and

(b) any article or substance commonly used in the manufacture of food for human consumption which is found on premises used for the preparation, storage or placing on the market of that food,

shall be presumed, until the contrary is proved, to be intended for placing on the market, or for manufacturing food for placing on the market, for human consumption.

(**5**) S.I. 1991/762 (N.I. 7) as amended by S.I. 1996/1633 (N.I. 12) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c. 28, paragraph 2 of Article 2 (regarding the definition of "food") was substituted by S.R. 2004 No. 482
(**6**) 1971 c. 80
(**7**) 1954 c. 33 (N.I.)

(4) Any article or substance capable of being used in the composition or preparation of any food commonly used for human consumption which is found on premises on which that food is prepared shall, until the contrary is proved, be presumed to be intended for such use.

Competent authority

4. The competent authority for the purposes of the Community Regulations shall be the Agency except where it has delegated competences as provided for in those Regulations.

Enforcement

5.—(1) In respect of any food business operator to whose operations Regulation 852/2004 applies but Regulation 853/2004 does not apply—

(a) the Agency shall enforce and execute the Hygiene Regulations in so far as the operator concerned is carrying out primary production and those associated operations listed in paragraph 1 of Part AI of Annex I to Regulation 852/2004 other than the associated operations described in sub-paragraphs (a) and (c) of that paragraph in so far as they concern wild game; and

(b) the district council in whose district the food business operator carries out his operations shall enforce and execute these Regulations in so far as the operator concerned is carrying out operations which are not enforced and executed by the Agency pursuant to sub-paragraph (a).

(2) In respect of any food business operator to whose operations both Regulation 852/2004 and Regulation 853/2004 apply—

(a) the Agency shall enforce and execute the Hygiene Regulations in so far as the operator concerned is carrying out operations in relation to the following establishments and activities—

(i) slaughterhouses,

(ii) game handling establishments,

(iii) cutting plants placing fresh meat on the market, and

(iv) the activities in respect of eggs as set out in Chapter I of Section X of Annex III to Regulation 853/2004; and

(b) the Agency or the district council in whose district the food business operator carries out his operations shall enforce and execute the Hygiene Regulations in so far as the operator concerned is carrying out operations in relation to any establishment or activity that is not specified in sub-paragraph (a) and is regulated by Regulation 853/2004.

(3) In respect of—

(a) collection centres and tanneries supplying raw material for the production of gelatine intended for human consumption pursuant to paragraph 5 of Chapter I of Section XIV of Annex III to Regulation 853/2004; and

(b) collection centres and tanneries supplying raw material for the production of collagen intended for human consumption pursuant to paragraph 5 of Chapter I of Section XV of Annex III to Regulation 853/2004,

the Agency shall enforce and execute the Hygiene Regulations.

(4) Each district council shall enforce and execute these Regulations in its district in relation to the matters regulated by Schedules 3 to 5.

(5) The Agency shall enforce and execute these Regulations in relation to the matters regulated by Schedule 6.

PART 2

MAIN PROVISIONS

Hygiene improvement notices

6.—(1) If an authorised officer has reasonable grounds for believing that a food business operator is failing to comply with the Hygiene Regulations, he may by a notice served on that person (a "hygiene improvement notice")—

(a) state the officer's grounds for believing that the food business operator is failing to comply with the Hygiene Regulations;

(b) specify the matters which constitute the food business operator's failure to comply;

(c) specify the measures which, in the officer's opinion, the food business operator must take in order to secure compliance; and

(d) require the food business operator to take those measures, or measures which are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.

(2) Any person who fails to comply with a hygiene improvement notice shall be guilty of an offence.

Hygiene prohibition orders

7.—(1) If—

(a) a food business operator is convicted of an offence under these Regulations; and

(b) the court by or before which he is so convicted is satisfied that the health risk condition is fulfilled with respect to the food business concerned,

the court shall by an order impose the appropriate prohibition.

(2) The health risk condition is fulfilled with respect to any food business if any of the following involves risk of injury to health (including any impairment, whether permanent or temporary), namely—

(a) the use for the purposes of the business of any process or treatment;

(b) the construction of any premises used for the purposes of the business, or the use for those purposes of any equipment; and

(c) the state or condition of any premises or equipment used for the purposes of the business.

(3) The appropriate prohibition is—

(a) in a case falling within paragraph (2)(a), a prohibition on the use of the process or treatment for the purposes of the business;

(b) in a case falling within paragraph (2)(b), a prohibition on the use of the premises or equipment for the purposes of the business or any other food business of the same class or description; and

(c) in a case falling within paragraph (2)(c), a prohibition on the use of the premises or equipment for the purposes of any food business.

(4) If—

(a) a food business operator is convicted of an offence under these Regulations; and

(b) the court by or before which he is so convicted thinks it proper to do so in all the circumstances of the case,

the court may, by an order, impose a prohibition on the food business operator participating in the management of any food business, or any food business of a class or description specified in the order.

(5) As soon as practicable after the making of an order under paragraph (1) or (4) (a "hygiene prohibition order"), the enforcement authority shall—

(a) serve a copy of the order on the relevant food business operator; and

(b) in the case of an order made under paragraph (1), affix a copy of the order in a conspicuous position on such premises used for the purposes of the food business as they consider appropriate,

and any person who knowingly contravenes such an order shall be guilty of an offence.

(6) A hygiene prohibition order shall cease to have effect—

(a) in the case of an order made under paragraph (1), on the issue by the enforcement authority of a certificate to the effect that they are satisfied that the food business operator has taken sufficient measures to secure that the health risk condition is no longer fulfilled with respect to the food business; and

(b) in the case of an order made under paragraph (4), on the giving by the court of a direction to that effect.

(7) The enforcement authority shall issue a certificate under paragraph (6)(a) within three days of their being satisfied as mentioned in that sub-paragraph; and on an application by the food business operator for such a certificate, the authority shall—

(a) determine, as soon as is reasonably practicable and in any event before the expiration of 14 days from the making of the application, whether or not they are so satisfied; and

(b) if they determine that they are not so satisfied, give notice to the food business operator of the reasons for that determination.

(8) The court shall give a direction under paragraph (6)(b) if, on an application by the food business operator, the court thinks it proper to do so having regard to all the circumstances of the case, including in particular the conduct of the food business operator since the making of the order; but no such application shall be entertained if it is made—

(a) before the expiration of 6 months from the making of the hygiene prohibition order; or

(b) before the expiration of 3 months from the making by the food business operator of a previous application for such a direction.

(9) Where a magistrates' court makes an order under regulation 8(2) with respect to any food business, paragraph (1) shall apply as if the food business operator had been convicted by the court of an offence under these Regulations.

(10) Where the commission of an offence by a food business operator leads to the conviction of another person pursuant to regulation 10, paragraph (4) shall apply in relation to that other person as it applies in relation to the food business operator and any reference in paragraph (5) or (8) to the food business operator shall be construed accordingly.

Hygiene emergency prohibition notices and orders

8.—(1) If an authorised officer is satisfied that the health risk condition is fulfilled with respect to any food business, he may, by a notice served on the relevant food business operator (a "hygiene emergency prohibition notice") impose the appropriate prohibition.

(2) If a magistrates' court is satisfied, on the application of such an officer, that the health risk condition is fulfilled with respect to any food business, the court shall, by an order (a "hygiene emergency prohibition order"), impose the appropriate prohibition.