STATUTORY RULES OF NORTHERN IRELAND

2005 No. 201

FOOD

The Miscellaneous Food Additives (Amendment No. 2) Regulations (Northern Ireland) 2005

Made - - - -	*5th April 2005*
Coming into operation	*28th May 2005*

The Department of Health, Social Services and Public Safety(**1**) in exercise of the powers conferred on it by Articles 15(1)(a), 16(1), 25(1) and (3), 26(3) and 47(2) of, and paragraph 1 of Schedule 1 to, the Food Safety (Northern Ireland) Order 1991(**2**), and of all other powers enabling it in that behalf, having had regard in accordance with Article 47(3A) of the said Order to relevant advice given by the Food Standards Agency, 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(**3**), hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Miscellaneous Food Additives (Amendment No. 2) Regulations (Northern Ireland) 2005 and shall come into operation on 28th May 2005.

Amendment of the Miscellaneous Food Additives Regulations (Northern Ireland) 1996

2. The Miscellaneous Food Additives Regulations (Northern Ireland) 1996(**4**) shall be amended in accordance with regulations 3 to 14.

3. In paragraph (1) of regulation 2 (interpretation) –

(a) after the definition of "colour", there shall be inserted –

(**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) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c. 28 and S.R. 2004 No. 482

(**3**) O.J. No. L31, 1.2.2001, 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). By virtue of regulation 5 of the Food Safety (Northern Ireland) Order 1991 (Amendment) Regulations (Northern Ireland) 2004 (S.R. 2004 No. 482), with effect from 7th December 2004 the consultation requirement contained in Article 47(3) of the 1991 Order is disapplied in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002

(**4**) S.R. 1996 No. 50, amended by S.R. 1997 No. 340, S.R. 1999 No. 244, S.R. 2001 No. 45, S.R. 2001 No. 46, S.R. 2001 No. 419, S.R. 2003 No. 158, S.R. 2003 No. 301, S.R. 2003 No. 305, S.R. 2003 No. 300, S.R. 2003 No. 313, S.R. 2003 No. 383, S.R. 2003 No. 519, S.R. 2003 No. 535, S.R. 2004 No. 439 and S.R. 2005 No. 19

"Directive 88/388 EC means Council Directive 88/388/EEC(**5**) on the approximation of the laws of the Member States relating to flavourings for use in foodstuffs and to source materials for their production".

(b) in the definition of "Directive 95/2/EC" for "and European Parliament and Council Directive 2001/5/EC" there shall be substituted –

", European Parliament and Council Directive 2001/5/EC(**6**) and European Parliament and Council Directive 2003/114/EC(**7**)

(c) after the definition of flavour enhancer, there shall be inserted –

""flavouring" bears the same meaning as in Article 1.2 of Directive 88/388/EEC(**8**);";

(d) for the definition of "stabiliser", there shall be substituted –

""stabiliser" means any substance which makes it possible to maintain the physico-chemical state of a foodstuff; including any substance which enables the maintenance of a homogenous dispersion of two or more immiscible substances in a foodstuff, substances which stabilise, retain or intensify an existing colour of a foodstuff and substances which increase the binding capacity of the food, including the formation of cross-links between proteins enabling the binding of food pieces into re-constituted food;".

4. In paragraph (1) of regulation 4 (use of miscellaneous additives in or on compound foods), after "that compound food contains, as an ingredient, a food", there shall be inserted –

"or a flavouring".

5. After regulation 4 the following regulation shall be inserted –

"**Use of permitted miscellaneous additives in flavourings**

4A.—(1) Where –

(a) a permitted miscellaneous additive is used in a flavouring;

(b) that flavouring is an ingredient of a compound food; and

(c) the permitted miscellaneous additive performs a technological purpose in the final food;

the permitted miscellaneous additive shall be regarded for the purposes of these Regulations as an additive of the final food.

(2) No person shall use any permitted miscellaneous additive in or on any flavouring where –

(a) the level of such additives used exceeds the minimum necessary to guarantee the safety and quality of the flavouring and to facilitate its storage;

(b) the presence of such additives is a hazard to human health, or misleading to the consumer.".

6. In regulation 11 (transitional provision and exemptions), after paragraph (1E), there shall be inserted –

"(1F) In any proceedings for an offence under these Regulations in respect of any food additives, food or flavouring, it shall be a defence to prove –

(**5**) O.J. No. L84, 15.7.1988, p. 61
(**6**) O.J. No. L55, 24.2.2001, p. 59
(**7**) O.J. No. L24, 29.1.2004, p. 58
(**8**) O.J. No. L184, 15.7.1988, p. 61

(a) the food additive, food or flavouring concerned was put on the market or labelled before 27th January 2006; and

(b) the matter constituting the offence would not have constituted an offence under these Regulations if the amendments made by regulations 3 to 6, 7(b), 8(a), 8(b)(ii), 9(a), 10, 11(a) to (c), (e) to (i) and (k) to (l) of the Miscellaneous Food Additives (Amendment No. 2) Regulations (Northern Ireland) 2005 had not been made when the food additive, food or flavouring was placed on the market or labelled.".

7. In Schedule 1 (miscellaneous additives generally permitted for use in foods not referred to in Schedule 6, 7 or 8) –

(a) for Note 1, there shall be substituted –

"(1) The substances E407, E407a and E440 may be standardised with sugars, on condition that this is stated in addition to the number and designation.";

(b) in the entry relating to E170, in the second column, for "Calcium carbonates (i) calcium carbonate (ii) calcium hydrogen carbonate", there shall be substituted –

"Calcium carbonate";

(c) in the entry relating to E466, in the second column, the following shall be added at the end –

"Cellulose gum";

(d) in the entry relating to E469, in the second column, the following shall be added at the end –

"Enzymatically hydrolysed cellulose gum".

8. In Schedule 2 (conditionally permitted preservatives and antioxidants) Part A (sorbates, benzoates and p-hydroxybenzoates) –

(a) in the first column (entitled "Food") of the second table, for "Partially baked, pre-packed bakery wares intended for retail sale", there shall be substituted –

"Partially baked, pre-packed bakery wares intended for retail sale and energy-reduced bread intended for retail sale";

(b) the following entries shall be added to the second table at the end:

"Crayfish tails, cooked and pre-packed	2000	
Marinated cooked molluscs		
Flavourings		1500"

9. In Schedule 2 Part C (other preservatives) –

(a) the entries relating to E230 shall be omitted;

(b) in the entry relating to E1105, in the third and fourth columns (entitled respectively "Food" and "Maximum level") there shall be added –

"Wine in accordance with Regulation (EC) No. 1493/1999(**9**) and its implementing Regulation (EC) No. 1622/2000(**10**)	Pro memoria"

10. In Schedule 2 Part D (other antioxidants) –

(a) in the entry relating to E310 to E320, in the third and fourth columns (entitled respectively "Food" and "Maximum level (mg/kg)"), the following shall be added –

"Essential oils	1000 mg/kg (gallates and BHA, individually or in combination) E310-E320 only
Flavourings other than essential oils	100 mg/kg (gallates, individually or in combination) or 200 mg/kg (BHA) E310-E320 only"

(b) in the entry relating to E315 and E316, for "semi-preserved and preserved meat product", there shall be substituted –

"Cured meat products and preserved meat products".

11. In Schedule 3 (other permitted miscellaneous additives) –

(a) in the entry relating to E338, E339, E340, E341, E343, E450, E451 and E452 –

(i) in the third and fourth columns (entitled respectively "Food" and " Maximum level") the following shall be added –

"Flavourings"	"40g/kg"

(ii) in the third column, "cider and perry" and in the corresponding entry in the fourth column, "2g/l" shall be omitted;

(b) in the entry relating to E416, in the third and fourth columns, the following shall be added –

"Flavourings"	"50g/kg"

(c) in the entry relating to E432, E433, E434, E435 and E436, in the third and fourth columns, the following shall be added –

"Flavourings, except liquid smoke flavourings and flavourings based on spice oleoresins"	"10g/kg"
"Foodstuffs containing liquid smoke flavourings and flavourings based on spice oleoresins"	"1g/kg"

(d) in the entry relating to E444, in the third and fourth columns, the following shall be added –

(**9**) Council Regulation (EC) No. 1493/1999 of 17th May 1999 on the common organisation of the market in wine, O.J. No. L179, 14.7.1999, p. 1

(**10**) Commission Regulation (EC) No. 1622/2000 of 24th July 2000 laying down certain detailed rules for implementing Regulation (EC) No. 1493/1999 on the common organisation of the market in wine and establishing a Community code of oenological practices and processes, O.J. No. L194, 31.7.2001, p. 1

"Flavoured cloudy spirit drinks containing less than 15% alcohol by volume"	"300 mg/l"

(e) in the entry relating to E459, in the third and fourth columns, the following shall be added –

"Encapsulated flavourings in — flavoured teas and flavoured powdered instant drinks — flavoured snacks"	"500 mg/l 1g/kg in foodstuffs as consumed or as reconstituted according to the instructions of the manufacturer"

(f) in the entry relating to E551, in the third and fourth columns, the following shall be added –

"Flavourings	50g/kg E551 only"

(g) in the entry relating to E900, in the third and fourth columns, the following shall be added –

"Flavourings	10 mg/kg"

(h) the entry relating to E901, E902, E903 and E904, "E903 Carnauba wax" shall be omitted;

(i) after the entry relating to E901, E902 and E904, as amended by paragraph (h), the following shall be inserted –

"E903	Carnauba wax	As glazing agents only:	
		– confectionery (including chocolate)	500 mg/kg 1200 mg/kg (only for chewing gum)
		– small products of fine bakery wares coated with chocolate	200 mg/kg 200 mg/kg
		– snacks	200 mg/kg
		– nuts	
		– coffee beans	200 mg/kg
		– dietary food supplements	200 mg/kg
		– fresh citrus fruits, melons, apples, pears, peaches and pineapples (surface treatment only)	200 mg/kg"

(j) after the entry for E905, the following shall be inserted –

"E907	Hydrogenated poly-1-decene	As glazing agent for