STATUTORY RULES OF NORTHERN IRELAND

2005 No. 76

FOOD

The Smoke Flavourings Regulations (Northern Ireland) 2005

Made - - - - 9th March 2005

Coming into operation in accordance with regulation 1

The Department of Health, Social Services and Public Safety(**1**) in exercise of the powers conferred on it by Articles 15(1)(a), (c), (e), (f) and (3), 16(2), 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 Smoke Flavourings Regulations (Northern Ireland) 2005 and shall come into operation –

(i) in the case of regulation 3 and regulations 1 and 2 insofar as they relate to regulation 3 on 1st April 2005;

(ii) otherwise, on 16th June 2005.

Interpretation

2.—(1) In these Regulations –

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

"Regulation 2065/2003" means Regulation (EC) No. 2065/2003 of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods(**4**);

(**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

(**3**) 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). 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**) O.J. No. L309, 26.11.2003, p. 1

"specified Community provision" means a provision of Regulation 2065/2003 specified in column 1 and described in column 2 of the Schedule to these Regulations.

(2) Other expressions used in these Regulations and in Regulation 2065/2003 have the same meanings in these Regulations as in Regulation 2065/2003.

Administration of Regulation 2065/2003

3. The national competent authority for the purposes of Article 7 of Regulation 2065/2003 (application for authorisation) shall be the Food Standards Agency(**5**).

Condemnation of food

4.—(1) Where, in relation to any food, a contravention of any of Articles 4.2, 5.1, 5.2, 9.4 or 9.5 of Regulation 2065/2003 has occurred –

(a) that food shall be treated for the purposes of Article 8 of the Order as failing to comply with the food safety requirements, and

(b) if that food is part of a batch, lot or consignment of food of the same class or description, it shall be presumed, until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

(2) For the purposes of this regulation "food" includes any primary smoke condensate, primary tar fraction or derived smoke flavouring.

Offences and penalties

5. Any person who contravenes or fails to comply with any of the specified Community provisions contained in the Schedule shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Application of various provisions of the Food Safety (Northern Ireland) Order 1991

6. The following provisions of the Order shall apply for the purposes of these Regulations and Regulation 2065/2003 as they apply for the purposes of the Order –

(a) Article 4 (presumption that food is intended for human consumption);

(b) Article 19 (offences due to the fault of another person);

(c) Article 20 (defence of due diligence) as it applies for the purposes of Articles 13 or 14 of the Order;

(d) Article 21 (defence of publication in the course of business);

(e) Article 30(8) (which relates to documentary evidence);

(f) Article 34(1) (obstruction, etc. of officers);

(g) Article 34(2), with the modification that the reference to "any such requirement as is mentioned in paragraph 1(b)" shall be deemed to be a reference to any such requirement as is mentioned in Article 34(1)(b) as applied by sub-paragraph (f);

(h) Article 36(1) (punishment of offences) insofar as it relates to offences under Article 34(1) as applied by sub-paragraph (f);

(i) Article 36(2) and (3) insofar as it relates to offences under Article 34(2) as applied by sub-paragraph (g)

(**5**) Whose address in Northern Ireland is 10a-c Clarendon Road, Belfast, BT1 3BG