STATUTORY RULES OF NORTHERN IRELAND

2005 No. 49

FOOD

The Plastic Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 2005

Made - - - - 24th February 2005

Coming into operation 18th March 2005

The Department of Health, Social Services and Public Safety(**1**), in exercise of the powers conferred on it by Articles 15(2), 16(1), 25(1)(a) and (3), 26(3) and 47(2) of 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 Plastic Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 2005, and shall come into operation on 18th March 2005.

Amendments to the Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 1998

2. The Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 1998(**4**) shall be amended, in accordance with regulations 3 to 16.

3. In regulation 2 (interpretation) –

(a) in paragraph (1) –

(i) for the definition of "additive" there shall be substituted " "additive" means a substance as defined in paragraph 1 of the general introduction to Annex III to the Directive as read with paragraph 3 of Article 4 of the Directive;";

(**1**) Formerly the Department of Health and Social Services; *see*S.I. 1999/283 (N.I.) Article 3

(**2**) S.I. 1991/762 (N.I. 7) as amended by S.I. 1996/1663 (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, 1.2.2002, p. 1

(**4**) S.R. 1998 No. 264 as amended by S.R. 2000 No. 402, S.R. 2002 No. 316 and S.R. 2003 No. 2

(ii) in the definition of "Council Directive 82/711", omit "as amended" to the end;

(iii) after the definition of "Council Directive 82/711" there shall be inserted –

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

"Council Directive 89/107" means Council Directive 89/107/EEC on the approximation of the laws of the Member States concerning food additives authorised in foodstuffs intended for human consumption(**6**);";

(iv) omit the definition of "EEA Agreement";

(v) for the definition of "EEA State" there shall be substituted " "EEA State" means a Member State (other than the United Kingdom), Norway, Iceland and Liechtenstein;";

(vi) immediately after the definition of "EEA State" there shall be inserted –

""EFSA" means the European Food Safety Authority;";

(i) immediately after the definition of "preparation" there shall be inserted –

""the purity Directives" means Commission Directive 95/31/EC laying down specific criteria of purity concerning sweeteners for use in foodstuffs(**7**), Commission Directive 95/45/EC laying down purity criteria concerning colours for use in foodstuffs(**8**) and Commission Directive 96/77/EC laying down specific purity criteria for food additives other than colours or sweeteners(**9**);";

(b) after paragraph (5) there shall be added –

"(6) Any reference in these Regulations to a Community instrument shall be construed as a reference to that instrument as amended at the time the Plastic Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 2005 were made.".

4. In Regulation 4 (restriction on the use of monomers in the manufacture of plastic materials and articles) –

(a) in paragraph (2) omit sub-paragraphs (a) and (b);

(b) in paragraph (5)(b)(ii) after "material" in each case insert "or article".

5. In regulation 5 (restriction on the use of additives in the manufacture of plastic materials and articles) –

(a) in paragraph (1) add after sub-paragraph (d) –

"(e) any food additive authorised by Council Directive 89/107 or any flavouring authorised by Council Directive 88/388 that migrates into food –

(i) in a quantity that has a technological function in the final food product, or

(ii) where the food is of a type for which the use of any such food additive or flavouring is so authorised, in quantities exceeding the limits provided for in Council Directive 89/107 or Council Directive 88/388 as appropriate, or in Schedule 2 to these Regulations, whichever is the lower.".

(**5**) O.J. No. L184, 15.7.88, p. 61
(**6**) O.J. No. L40, 11.2.89, p. 27
(**7**) O.J. No. L178, 28.7.95, p. 1
(**8**) O.J. No. L226, 22.9.95, p. 1
(**9**) O.J. No. L339, 30.12.96, p. 1

(b) in paragraph (4)(b)(ii) after "material" in each case insert "or article".

6. After regulation 5A there shall be inserted –

"**Applications for inclusion of an additive in the Community list of authorised additives**

5B.—(1) This regulation applies to any person who wishes to make an application for the inclusion of an eligible additive in the Community list referred to in Article 4 of the Directive.

(2) An application mentioned in paragraph (1) including supporting data must be made to EFSA before 1st January 2007.

(3) If, during examination of the data referred to in paragraph (2), EFSA calls for supplementary information, the eligible additive may, if permitted to be used under Northern Ireland law, continue to be so used until EFSA has issued an opinion, provided such information is submitted within the time limits specified by EFSA.

(4) For the purposes of this regulation an eligible additive is one whose use is permitted in one or more Member States before 1st January 2007.".

7. For regulation 8 (labelling) there shall be substituted –

"At marketing stages other than the retail stage a person who is in possession of any plastic material or article intended to come into contact with food shall ensure that the plastic material or article is accompanied by a written declaration which –

(a) attests that it complies with the legislation applicable to it; and

(b) provides, in respect of substances that are subject to a restriction on quantities migrating into food, information obtained from experimental data or theoretical calculation concerning –

(i) the levels of migration specific to those substances;

(ii) where appropriate, purity criteria in accordance with the purity Directives.".

8. In regulation 10 (offences) –

(a) in paragraph (1) for "8(1)" there shall be substituted "8";

(b) after paragraph (24) there shall be added –

"(25) In any proceedings for an offence under these Regulations it shall be a defence to prove that –

(a) the act constituting the offence was committed in relation to a plastic material or article which was manufactured or imported into the European Community before 1st March 2006; and

(b) the act constituting the offence would not have constituted an offence under these Regulations if the amendments made to them by the Plastic Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 2005 had not been in force at the time that act occurred.".

9. In Schedule 1, Part I –

(a) in Section A (monomers authorised without time limit) –

(i) there shall be inserted in the appropriate numerical order the entries set out in Schedule 1;

(ii) for items 15A, 39, 70, 120B, 147, 147A, 147B and 188 there shall be substituted the entries set out in Schedule 2;

(iii) items 76B and 76C with their corresponding entries shall be omitted;

(b) omit Sections B and C.

10. In Schedule 1, Part II (supplementary) paragraph 4,

(a) at the end of note (21) for "and 18670," substitute "19670, 54880 and 59280.";

(b) after note (25) there shall be added –

"(27) QMA(T) in this case means that the restriction shall not be exceeded by the sum of the residual quantities of the following substances having PM/REF Nos. 10599/90A, 10599/91, 10599/92A and 10599/93.

(28) SML(T) in this case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances having PM/REF Nos. 13480 and 39680.

(29) SML(T) in this case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances having PM/REF Nos. 22775 and 69920.

(32) Compliance testing when there is a fat contact should be performed using isoctane as substitute of simulant D (unstable).

(33) QMA(T) in this case means that the restriction shall not be exceeded by the sum of the residual quantities of the following substances having PM/REF Nos. 14800 and 45600.".

11. In Schedule 2, Part I (incomplete list of additives used in the manufacture of plastic materials and articles) –

(a) there shall be inserted in appropriate numerical order the entries set out in Schedule 3;

(b) for items 60A and 198A there shall be substituted the entries set out in Schedule 4;

(c) items 112, 173A, 195C and 240 with their corresponding entries shall be omitted.

12. In Schedule 2, Part II (incomplete list of additives used in the manufacture of plastic materials and articles to which paragraph 5 of Part III of Schedule 2 applies) –

(a) there shall be inserted in appropriate numerical order the entries set out in Schedule 5;

(b) items 28, 80 and 111A with their corresponding entries shall be omitted.

13. In Schedule 2, Part III (supplementary) –

(a) in paragraph 4 –

(i) in note (8), there shall be inserted in the appropriate numerical order "38000" and "67896";

(ii) in note (10), after "levels" insert "(expressed as iodine)";

(iii) at the end of note (21), for "and 18670," substitute ", 18670, 54880 and 59280";

(iv) after note (24) add –

"(26) QMA(T) in this case means that the restriction shall not be exceeded by the sum of the residual quantities of the following substances mentioned as reference Nos. 14950, 15700, 16240, 16570, 16600, 16630, 18640, 19110, 22332, 22420, 22570, 25210, 25240 and 25270.

(27) QMA(T) in this case means that the restriction shall not be exceeded by the sum of the residual quantities of the following substances having PM/REF Nos. 10599/90A, 10599/91, 10599/92A and 10599/93.

(28) SML(T) in this case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances having PM/REF Nos. 13480 and 39680.

(29) SML(T) in this case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances having PM/REF Nos. 22775 and 69920.

(30) SML(T) in this case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances having PM/REF Nos. 86480, 86960 and 87120.

(31) Compliance testing when there is a fat contact should be performed using saturated fatty food simulants as simulant D.

(32) Compliance testing when there is a fat contact should be performed using isoctane as substitute of stimulant D (unstable).

(33) QMA(T) in this case means that the restriction shall not be exceeded by the sum of the residual quantities of the following substances having PM/REF Nos. 14800 and 45600.

(34) SML(T) in this case means that the restriction shall not be exceeded by the sum of the migration levels of the following substances having PM/REF Nos. 55200, 55280 and 55360.";

(b) in paragraph 5 for "1st January 2004" there shall be substituted "1st July 2006".

14. In Schedule 2A (products obtained by bacterial fermentation) for the entry in the column headed "restrictions and specifications" there shall be substituted –

"In compliance with specifications included in Schedule 2B".

15. For Schedule 2B (specifications) there shall be substituted the Table set out in Schedule 6.

16. For paragraph 4(b) of Part I (basic rules) of Schedule 4 (overall and specific migration testing using food simulants) there shall be substituted –

"(b) omit the migration, the substitute or the alternative tests where –

(i) there is conclusive proof that the migration limits cannot be exceeded in any foreseeable conditions of use of the material or article, or

(ii) the conditions for non-compulsory testing set out in Article 8.2 and 8.3 of the Directive are met.".

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 24th February 2005.

Deirdre Kenny
A senior officer of the
Department of Health, Social Services and
Public Safety