STATUTORY RULES OF NORTHERN IRELAND

2003 No. 313

FOOD

Cocoa and Chocolate Products Regulations (Northern Ireland) 2003

Made - - - -	*19th June 2003*
Coming into operation	*3rd August 2003*

The Department of Health, Social Services and Public Safety(**1**) in exercise of the powers conferred on it by Articles 15(1)(e), 16(1), 25(1) 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 both 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**) and in accordance with Article 47(3) and (3B) of the said Order, hereby makes the following Regulations: –

Citation and commencement

1. These Regulations may be cited as the Cocoa and Chocolate Products Regulations (Northern Ireland) 2003 and shall come into operation on 3rd August 2003.

Interpretation

2. In these Regulations –

"the 1996 Regulations" means the Food Labelling Regulations (Northern Ireland) 1996(**4**);

"catering establishment" means a restaurant, canteen, club, public house, school, hospital or similar establishment (including a vehicle or a fixed or mobile stall) where, in the course of a business, food is prepared for delivery to the ultimate consumer and is ready for consumption without further preparation;

(**1**) Formerly the Department of Health and Social Services; *see*S.I.1999/283 (N.I. 1), Article 3
(**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
(**4**) S.R. 1996 No. 383; the relevant amending Regulations are S.R. 1998 No. 253, S.R.1999 Nos. 143, 244 and 286, S.R. 2000 Nos.189 and 303, S.R. 2001 No. 45 and S.R. 2003 No. 159

"designated product" means any cocoa or chocolate product specified in column 2 of Schedule 1, as read with any Note to that Schedule and any provision of regulation 3 and Schedule 2 relating to that product; and "designated chocolate product" and "designated cocoa product" mean any such product which is respectively a chocolate product or a cocoa product;

"EEA Agreement" means the Agreement on the European Economic Area(**5**) signed at Oporto on 2nd May 1992 as adjusted by the Protocol(**6**) signed at Brussels on 17th March 1993;

"EEA State" means a State which is a Contracting Party to the EEA Agreement;

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

"other edible substances" does not include vegetable fats referred to in regulation 3 or the filling of any product specified in column 2 of item 7 or of item 10(a) of Schedule 1;

"preparation" includes manufacture and any form of processing or treatment;

"reserved description", as respects any designated product, means any description specified in relation to that product in column 1 of Schedule 1;

"sell" includes offer or expose for sale or have in possession for sale;

"ultimate consumer" means any person who buys otherwise than –

(a) for the purpose of resale,

(b) for the purposes of a catering establishment, or

(c) for the purposes of a manufacturing business.

Vegetable fats in chocolate products

3.—(1) Subject to paragraph (2), the vegetable fats, other than cocoa butter, specified in Schedule 2 may be added to those designated chocolate products specified in column 2 of items 3, 4, 5, 6, 8 and 9 of Schedule 1.

(2) An addition in accordance with paragraph 1 may not exceed 5 per cent of the finished product, after deduction of the total weight of any other edible substances used in accordance with Note 1 to Schedule 1, without reducing the minimum content of cocoa butter or total dry cocoa solids.

Scope of Regulations

4. These Regulations apply to designated products intended for human consumption and ready for delivery to the ultimate consumer or to a catering establishment.

Reserved descriptions

5. No person shall sell any food with a label, whether or not attached to or printed on the wrapper or container, which bears, comprises or includes any reserved description or any derivative thereof or any word or description substantially similar thereto unless –

(a) such food is the designated product to which the reserved description relates;

(b) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that the substance to which it relates is only an ingredient of that food; or

(c) such description, derivative or word is used in such a context as to indicate explicitly or by clear implication that such food is not and does not contain a designated product.

(**5**) O.J. No. L1, 3.1.94, p. 1
(**6**) O.J. No. L1, 3.1.94, p. 571

Labelling and description of designated products

6.—(1) Without prejudice to the generality of Part II of the 1996 Regulations, no person shall sell any designated product unless it is marked or labelled with the following particulars –

(a) subject to paragraphs (2)(a) and (3), a reserved description of the product;

(b) subject to paragraph (2) of regulation 7, in the case of a designated chocolate product which, pursuant to regulation 3, contains vegetable fats other than cocoa butter, the conspicuous and clearly legible statement "contains vegetable fats in addition to cocoa butter";

(c) where "milk chocolate" is used as the reserved description or a qualification of the reserved description of a designated chocolate product, an accompanying indication of the dry milk solids content in the form "milk solids: … % minimum", provided that –

(i) as regards a designated chocolate product specified in column 2 of item 4(a) of Schedule 1, the dry milk solids content indicated is not less than 14 per cent; and

(ii) as regards a designated chocolate product specified in column 2 of item 5 of Schedule 1, the dry milk solids content indicated is not less than 20 per cent;

(d) subject to paragraph (4), in the case of a designated product specified in column 2 of item 2(c), 2(d), 2(e), 3, 4, 5, 8 or 9 of Schedule 1, an indication of the total dry cocoa solids content in the form "cocoa solids… % minimum";

(e) in the case of a designated cocoa product specified in column 2 of item 2(b) or 2(e), an indication of the cocoa butter content.

(2) Where designated chocolate products specified in column 2 of items 3, 4, 5 6, 7 and 10 of Schedule 1 are sold in an assortment –

(a) the reserved description may be replaced by "assorted chocolates" or "assorted filled chocolates" or a similar name; and

(b) the list of ingredients with which food is required by the 1996 Regulations to be marked or labelled may be a single list of ingredients for all the products in the assortment.

(3) The reserved descriptions "chocolate", "milk chocolate" and "couverture chocolate" may be supplemented by information or descriptions relating to quality criteria provided that the product contains –

(a) in the case of the reserved description "chocolate", not less than 43 per cent total dry cocoa solids, including not less than 26 per cent cocoa butter;

(b) in the case of the reserved description "milk chocolate", not less than 30 per cent total dry cocoa solids and not less than 18 per cent dry milk solids obtained by partly or wholly dehydrating whole milk, semi-skimmed or skimmed milk, cream, or from partly or wholly dehydrated cream, butter or milk fat, including not less than 4.5 per cent milk fat;

(c) in the case of the reserved description "couverture chocolate", not less than 16 per cent dry non-fat cocoa solids.

(4) The total dry cocoa solids content with which a designated product is required by paragraph (1)(d) to be marked or labelled shall be calculated after deduction of the weight of other edible substances provided for in Note 1 to Schedule 1 but not the weight of any ingredient specified in column 2 of Schedule 1 as an ingredient of that product or of any vegetable fat added in accordance with regulation 3.

Manner of marking or labelling

7.—(1) Regulations 35, 36(1) and (5) and 38 of the 1996 Regulations (which relate to the manner of marking or labelling of food) shall apply to the particulars with which a designated product is

required to be marked or labelled by regulation 6 as if they were particulars with which food is required to be marked or labelled by the 1996 Regulations.

(2) The information with which a designated chocolate product is required to be marked or labelled by paragraph (1)(b) of regulation 6 shall be –

(a) in the same field of vision as the list of ingredients with which the product is required by the1996 Regulations to be marked or labelled;

(b) clearly separated from that list;

(c) in bold lettering no less large than that of the list; and

(d) located near the reserved description, which may also appear elsewhere on the marking or labelling.

Penalties and enforcement

8.—(1) If any person contravenes any provision of regulation 5 or 6 he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Each district council shall enforce and execute these Regulations within its district.

Defence in relation to exports

9. In any proceedings for an offence under these Regulations it shall be a defence for the person accused to prove –

(a) that the food in respect of which the offence is alleged to have been committed was intended for export to a country which has legislation analogous to these Regulations and that the food complies with that legislation; and

(b) in the case of export to an EEA State, that the legislation complies with the provisions of Directive 2000/36/EC of the European Parliament and the Council relating to cocoa and chocolate products intended for human consumption(**7**).

Application of various provisions of the Order

10. The following provisions of the Order shall apply for the purposes of these Regulations and any reference in those provisions to the Order shall be construed for the purposes of these regulations as a reference to these Regulations –

(a) Articles 2(4) and 3 (extended meaning of sale etc.);

(b) Article 4 (presumptions that food intended for human consumption);

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

(d) Article 20 (defence of due diligence) as it applies for the purposes of Article 7, 13 or 14 of the Order;

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

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

(g) Article 34 (obstruction, etc., of officers);

(h) Article 36 (punishment of offences) in so far as it relates to offences under Article 34(1) and (2) as applied by paragraph (g).

(**7**) O.J. No. L197, 3.8.2000, p.19, as adopted by EEA Joint Committee Decision 152/2001 (O.J. No. L65, 7.3.2002, p. 26)

Amendments and revocations

11.—(1) In the 1996 Regulations, in regulation 4(2) (scope of Part II), sub-paragraph (b) shall be omitted.

(2) The following entries relating to the Cocoa and Chocolate Products Regulations (Northern Ireland) 1976(**8**) shall be omitted –

(a) in the Food (Revision of Penalties and Mode of Trial) Regulations (Northern Ireland) 1987(**9**), in Schedule 1;

(b) in the Food Safety (Northern Ireland) Order 1991 (Consequential Modifications) Order (Northern Ireland) 1991(**10**), in Schedule 1, Part I and in Schedules 2, 3 and 5;

(c) in the Food Safety (Exports) Regulations (Northern Ireland) 1991(**11**), in the Schedule;

(d) in the Food (Forces Exemptions) (Revocations) Regulations (Northern Ireland) 1992(**12**), in the Schedule;

(e) in the Miscellaneous Food Additives Regulations (Northern Ireland) 1996(**13**), in Schedule 9;

(f) in the 1996 Regulations, in regulation 49(3) and Schedule 9;

(g) in the Miscellaneous Food Additives (Amendment) Regulations (Northern Ireland) 1999(**14**), in regulation 14(1);

(h) in the Miscellaneous Food Additives (Amendment) Regulations (Northern Ireland) 2001(**15**), in regulation 6.

(3) In Schedule 9 to the Miscellaneous Food Additives Regulations (Northern Ireland) 1996 the entry relating to the Cocoa and Chocolate Products (Amendment) Regulations (Northern Ireland) 1982(**16**) shall be omitted.

(4) In the following provisions, for references to Directive 73/241/EEC(**17**) there shall be substituted references to Directive 2000/36/EC(**18**) –

(a) Schedule 2 to the Colours in Food Regulations (Northern Ireland) 1996(**19**);

(b) Schedules 3 and 7 to the Miscellaneous Food Additives Regulations (Northern Ireland) 1995(**20**).

(5) The Cocoa and Chocolate Products Regulations (Northern Ireland) 1976 and the Cocoa and Chocolate Products (Amendment) Regulations (Northern Ireland) 1982 are hereby revoked.

Transitional provision

12. In any proceedings for an offence under these Regulations it shall be a defence for the accused to prove that –

(a) the food concerned was marked or labelled before 3rd August 2003, and

(**8**) S.R.1976 No. 183, as amended by S.R. 1981 Nos.193, 194 and 305, S.R.1982 No. 349, S.R.1984 No. 407, S.R. 1991 Nos.203 and 344, S.R. 1992 No. 464 and S.R. 1996 Nos. 50, 53 and 383
(**9**) S.R. 1987 No. 38
(**10**) S.R. 1991 No. 203
(**11**) S.R. 1991 No. 344
(**12**) S.R. 1992 No. 464
(**13**) S.R. 1996 No. 50
(**14**) S.R. 1999 No. 244
(**15**) S.R. 2001 No. 46
(**16**) S.R. 1982 No. 349
(**17**) O.J. L228, 16.8.1973, p. 23, as repealed with effect from 3rd August 2003 by Directive 2000/36/EC (O.J. L197, 3.8.2000, p. 19)
(**18**) O.J. L197, 3.8.2000, p. 19
(**19**) S.R. 1996 No. 49
(**20**) S.R. 1996 No. 50; the relevant amending Regulations are S.R.1999 No. 244