STATUTORY RULES OF NORTHERN IRELAND

1996 No. 49

FOOD

Colours in Food Regulations (Northern Ireland) 1996

Made - - - -	*28th February 1996*
Coming into operation	*22nd April 1996*

The Department of Health and Social Services, and the Department of Agriculture being the Departments concerned(**1**) in exercise of the powers conferred on them 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 them in that behalf and after consultation in accordance with Article 47(3) of that Order with such organisations as appear to them to be representative of interests likely to be substantially affected by these Regulations, hereby make the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Colours in Food Regulations (Northern Ireland) 1996, and shall come into operation on 22nd April 1996.

Interpretation

2.—(1) In these Regulations—

"colour" means a food additive which is used or intended to be used for the primary purpose of adding or restoring colouring in a food, and includes—

(a) any natural constituent of food and any natural source not normally consumed as food as such and not normally used as a characteristic ingredient of food, and

(b) any preparation obtained from food or from any other natural source material by, in either case—

(i) physical extraction,

(ii) chemical extraction, or

(iii) physical and chemical extraction

which results in the selective extraction of the pigment relative to the nutritive or aromatic constituent,

(**1**) *See* S.I.1991/762 (N.I. 7) Article 2(2) for the definitions of "the Department concerned" and "regulations" and with respect to the powers conferred on each Department jointly and severally by virtue of those definitions

(**2**) S.I. 1991/762 (N.I. 7)

but does not include—

(aa) any food (including one in dried or concentrated form),

(bb) any flavouring,

used, in either case, in the manufacture of any compound food because of its aromatic, sapid or nutritive properties albeit that it may also be used secondarily to add or restore colouring to such compound food, and

(cc) any colour when it is used only for colouring any inedible external part of a food;

"Directive 94/36/EC" means European Parliament and Council Directive 94/36/EC(**3**) on colours for use in foodstuffs;

"Directive 95/45/EC" means Commission Directive 95/45/EC(**4**) laying down specific criteria of purity concerning colours for use in foodstuffs;

"food" means food sold, or intended for sale, for human consumption, and in regulation 8 and for the purposes of regulation 11 includes a colour;

"food additive" means any substance not normally consumed as a food in itself and not normally used as a characteristic ingredient of food, whether or not it has nutritive value, the intentional addition of which to food for a technological purpose in the manufacture, processing, preparation, treatment, packaging, transport, or storage of such food results, or may reasonably be expected to result, in it or its by-products becoming directly or indirectly a component of such foods;

"infants" means children under the age of twelve months;

"member State" means a member State of the European Community;

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

"permitted colour" means any colour listed in Schedule 1 which satisfies the specific purity criteria for that colour set out in the annex to Directive 95/45/EC;

"processed" in relation to any food, means having undergone any treatment resulting in a substantial change in the original state of the food, but does not include dividing, parting, severing, boning, mincing, skinning, paring, peeling, grinding, cutting, cleaning, trimming, deep-freezing, freezing, chilling, milling, husking, packing or unpacking;

"sell" includes possess for sale, and offer, expose or advertise for sale;

"young children" means children aged between one and three years,

and other expressions used in these Regulations and in Directive 94/36/EC have the same meaning as they have in that Directive.

(2) Any reference in these Regulations to a Community instrument is a reference to it as amended, modified or otherwise adapted.

(3) Any reference in these Regulations to—

(a) a maximum level of permitted colour in or on a food is to the maximum amount, in milligrams, of colouring principle contained in that permitted colour per kilogram or, as the case may be, per litre of food which is ready to eat having been prepared according to any instructions for use;

(b) *quantum satis,* means that no maximum level of permitted colour in or on a corresponding food is specified but that in or on such food a permitted colour may be used in accordance with good manufacturing practice at a level not higher than is necessary to achieve the intended purpose and provided that such use does not mislead the consumer.

(**3**) O.J. No. L237, 10.9.94, p. 13
(**4**) O.J. No. L226, 22.9.95, p. 1

Use of colours in or on food

3.—(1) No person shall use in or on any food any colour other than a permitted colour.

(2) No person shall use any permitted colour in or on any food listed in Schedule 2 except in accordance with paragraph (3)(a).

(3) Subject to paragraph (4) and to regulations 4, 5 and 6, no person shall use any permitted colour in or on any food unless—

(a) the food is one listed—

(i) in column 1 of Schedule 3, in which case there may be used in or on such food any permitted colour which is listed in relation to it in column 2 of Schedule 3 in an amount not exceeding the maximum level for such permitted colour in or on such food as listed in column 3 of Schedule 3;

(ii) in column 2 of Schedule 4, in which case there may be used in or on such food any permitted colour which is listed in relation to it in column 1 of Schedule 4 in an amount not exceeding the maximum level for such permitted colour in or on such food as listed in column 3 of Schedule 4; or

(iii) in Part III of Schedule 5, in which case there may be used in or on such food any of the permitted colours listed in Parts I and II of Schedule 5 in accordance with the conditions contained in that Schedule governing the use of such colours in or on such foods;

(b) the food is not listed in either Schedule 2 or in column 1 of Schedule 3, in which case there may be used in or on such food any one or more of the permitted colours listed in Part I of Schedule 5 up to an amount (in each case) of *quantum satis*.

(4) No person shall use any permitted colour listed in column 1 of Schedule 4 in or on any food other than the food or foods listed in relation to that permitted colour in column 2 of that Schedule.

Health marking etc. of certain meat and meat products

4. No person shall use any colour for the purpose of any health marking or any other marking required on any meat or meat product, other than the permitted colours—

(a) E 155 Brown HT;

(b) E 133 Brilliant Blue FCF;

(c) E 129 Allura Red AC; or

(d) an appropriate mixture of (b) and (c).

Use of colours on eggshells

5. No person shall use any colour for—

(a) the decorative colouring, or

(b) the stamping (as provided for in Regulation (EEC) No. 1274/91(**5**), introducing detailed rules for implementing Regulation (EEC) No. 1907/90 on certain marketing standards for eggs),

of eggshells, other than a permitted colour.

(**5**) O.J. No. L121, 16.5.91, p. 11

Use of colours in or on compound foods

6.—(1) Subject to paragraph (3), any food in or on which a permitted colour is used without contravening any of the provisions of paragraphs (2), (3) and (4) of regulation 3 may itself be used as an ingredient in a compound food in or on which the use of such colour is not otherwise permitted, and the presence in or on that compound food of such colour as a result of its containing such an ingredient shall not constitute a contravention of any of the provisions of those paragraphs of regulation 3.

(2) There may be used in or on a food any permitted colour the use of which would otherwise constitute a contravention of any of the provisions of paragraphs (2), (3) and (4) of regulation 3, where such a food is destined to be used solely in the preparation of a compound food and the resulting presence in or on that compound food of such colour does not itself constitute a contravention of any of the provisions of those paragraphs of regulation 3.

(3) Paragraph (1) shall not apply in the case of any compound food listed in Schedule 2.

Sale of colours and food containing colours

7.—(1) No person shall sell any colour for use in or on food unless such colour is a permitted colour.

(2) No person shall sell directly to the consumer any colour other than a specified permitted colour.

(3) For the purposes of paragraph (2), a "specified permitted colour" shall be any permitted colour other than—

(a) E 123 Amaranth;

(b) E 127 Erythrosine;

(c) E 128 Red 2G;

(d) E 154 Brown FK;

(e) E 160B Annatto, bixin, norbixin;

(f) E 161g Canthaxanthin;

(g) E 173 Aluminium; and

(h) E 180 Litholrubine BK.

(4) No person shall sell any food having in it or on it any added colour other than a permitted colour that has been used in or on that food without contravening any of the provisions of regulations 3, 4, 5 and 6.

Condemnation of food

8. Where any food is certified by a food analyst as being food which it is an offence against these Regulations to sell, that food may be treated for the purposes of Article 8 of the Order (under which food may be seized and destroyed on the order of a justice of the peace) as failing to comply with food safety requirements, and Article 7(2) of the Order shall apply for the purposes of these Regulations as it applies for the purposes of the Order.

Offences, penalties and enforcement

9.—(1) If any person contravenes any of the provisions of these Regulations he shall be guilty of an offence, and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) Subject to paragraph (3), these Regulations shall be enforced and executed by each district council within its district.

(3) The Department of Agriculture shall enforce and execute these Regulations in relation to milk in liquid milk plants.

Defence in relation to exports

10. In any proceedings for an offence under these Regulations it shall be a defence for the person charged to prove—

(a) that the food or, as the case may be, the colour 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 such food or colour complies with that legislation; and

(b) in the case of export to another member State, that the legislation complies with Council Directive 89/107/EEC(**6**) on the approximation of the laws of the member States concerning food additives authorised for use in foodstuffs intended for human consumption, Directive 94/36/EC and Directive 95/45/EC.

Application of various provisions of the Order

11. The following provisions of the Order shall apply for the purposes of these Regulations as they apply for the purposes of Articles 7, 13 and 14 of the Order and any reference in them to the Order shall be construed as a reference to these Regulations:

(a) Articles 2(4) and 3 (extending 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);

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

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

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

Revocations and amendments

12.—(1) The Regulations and order specified in columns 1 and 2 of Schedule 6 shall be revoked to the extent specified in column 3 of that Schedule.

(2) In the Specified Sugar Products Regulations (Northern Ireland) 1976(**7**)—

(a) in paragraph (3)(d) of regulation 5 (labelling and description of specified sugar products), for "colouring matter", in both places where it occurs, there shall be substituted, in each case, "colour";

(b) in sub-paragraph (b) of regulation 9 (permitted additional ingredients in specified sugar products), for "colouring matter", in both cases where it occurs, there shall be substituted, in each case, "colour".

(3) In the Jam and Similar Products Regulations (Northern Ireland) 1982(**8**)—

(a) in paragraph (1) of regulation 2 (interpretation), for the definition of "permitted colouring matter" there shall be substituted—

> ""permitted colour" means any colour in so far as its use is permitted by the Colours in Food Regulations (Northern Ireland) 1996;", and

(**6**) O.J. No. L40, 11.2.89, p. 27
(**7**) S.R. 1976 No. 165, to which there are amendments not relevant to these Regulations
(**8**) S.R. 1982 No. 105, to which there are amendments not relevant to these Regulations