1995 No. 377

FOOD

Food Safety (Temperature Control) Regulations (Northern Ireland) 1995

Made . . . . . 3rd October 1995

Coming into operation . . 20th November 1995

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Revocations

The Department of Health and Social Services in exercise of the powers conferred on it by Articles 15(1), 16(1), 25(1) and (3), 26(3) and 47(2) of the Food Safety (Northern Ireland) Order 1991(**a**) and of all other powers enabling it in that behalf and after consultation in accordance with Article 47(3) of the said Order with such organisations as appear to it to be representative of interests likely to be substantially affected by these Regulations, hereby makes the following Regulations:—

PART I

GENERAL

Citation and commencement

1. These Regulations may be cited as the Food Safety (Temperature Control) Regulations (Northern Ireland) 1995 and shall come into operation on 20th November 1995.

Interpretation

2.—(1) In these Regulations—

"the Directive" means Council Directive 93/43/EEC of 14th June 1993 on the hygiene of foodstuffs(**b**);

"food business" means any undertaking, whether carried on for profit or not and whether public or private, carrying out any or all of the following operations, namely, preparation, processing, manufacturing, packaging, storing, transportation, distribution, handling or offering for sale or supply of food;

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

"primary production" includes harvesting, slaughter and milking;

"recommended temperature" means a specified temperature which has been recommended in accordance with regulation 6(1)(*a*);

"shelf life" means—

(*a*) in relation to food with respect to which an indication of minimum durability is required in accordance with regulation 21 of the Food Labelling Regulations (Northern Ireland) 1984(**c**) (form of indication of minimum durability), the period up to and including the date required to be included in that indication;

(*b*) in relation to food with respect to which a 'use by' date is assigned in the form required in accordance with regulation 21A of the

(**a**) S.I. 1991/762 (N.I. 7). *See* Article 2(2) for the definitions of "regulations" and "the Department concerned"
(**b**) O.J. No. L175, 19.7.93, p. 1
(**c**) S.R. 1984 No. 407; the relevant amending Regulations are S.R. 1990 No. 440

Food Labelling Regulations (Northern Ireland) 1984(**a**) (form of indication of 'use by' date), the period up to and including that date;

(*c*) in relation to food which is not required to bear an indication of minimum durability or a 'use by' date, the period for which the food can be expected to remain fit for sale if it is kept in a manner which is consistent with food safety;

"special storage conditions" shall be construed in accordance with regulation 6(*d*) of the Food Labelling Regulations (Northern Ireland) 1984;

"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.

(2) In determining for the purposes of these Regulations whether any matter involves a risk to food safety, regard shall be had to the nature of the food, the manner in which it is handled and packed, any process to which the food is subjected before supply to the consumer, and the conditions under which it is displayed or stored.

Application of provision of these Regulations

3.—(1) Subject to paragraph (3), regulations 4 to 12 shall apply to neither—

(*a*) primary production; nor

(*b*) a person carrying on any activity which is regulated by or under any of the Regulations listed in paragraph (2), but only with respect to the carrying on of that activity.

(2) The Regulations referred to in paragraph (1)(*b*) are—

(*a*) the Food Safety (Live Bivalve Molluscs) (Derogations) Regulations (Northern Ireland) 1992(**b**);

(*b*) the Food Safety (Fishery Products) (Derogations) Regulations (Northern Ireland) 1992(**c**);

(*c*) the Food Safety (Fishery Products) Regulations (Northern Ireland) 1993(**d**);

(*d*) the Food Safety (Live Bivalve Molluscs and Other Shellfish) Regulations (Northern Ireland) 1993(**e**);

(*e*) the Food Safety (Fishery Products on Fishing Vessels) Regulations (Northern Ireland) 1993(**f**);

(**a**) The relevant amending Regulations are S.R. 1990 No. 440
(**b**) S.R. 1992 No. 295
(**c**) S.R. 1992 No. 296
(**d**) S.R. 1993 No. 51
(**e**) S.R. 1993 No. 52
(**f**) S.R. 1993 No. 53

(*f*) the Egg Products Regulations (Northern Ireland) 1993(**a**);

(*g*) the Poultry Meat, Farmed Game Bird Meat and Rabbit Meat (Hygiene and Inspection) Regulations (Northern Ireland) 1994(**b**);

(*h*) the Dairy Products (Hygiene) Regulations (Northern Ireland) 1995(**c**).

(3) Notwithstanding paragraph (1)(*b*), the provisions of regulations 4 to 12 shall apply to a person carrying on any activity which is regulated by—

(*a*) the Food Safety (Fishery Products) (Derogations) Regulations (Northern Ireland) 1992;

(*b*) the Food Safety (Fishery Products) Regulations (Northern Ireland) 1993;

(*c*) the Food Safety (Fishery Products on Fishing Vessels) Regulations (Northern Ireland) 1993,

unless, in the case of a particular product at a particular stage in its production, a provision in any of those Regulations imposes a further or alternative requirement in relation to the temperature at which that product is to be kept at that stage in its production.

PART II

TEMPERATURE CONTROL REQUIREMENTS

Chill holding requirements

4.—(1) Subject to paragraph (2) and regulation 5, no person shall keep any food—

(*a*) which is likely to support the growth of pathogenic micro-organisms or the formation of toxins; and

(*b*) with respect to which any commercial operation is being carried out,

at or in food premises at a temperature above 8°C.

(2) Paragraph (1) shall not apply to any food which, as part of a mail order transaction, is being conveyed by post or by a private or common carrier to an ultimate consumer.

(3) Subject to regulation 5, no person shall supply by mail order any food which—

(*a*) is likely to support the growth of pathogenic micro-organisms or the formation of toxins; and

(*b*) is being or has been conveyed by post or by a private or common carrier to an ultimate consumer,

at a temperature which has given rise to or is likely to give rise to a risk to health.

(**a**) S.R. 1993 No. 329
(**b**) S.R. 1994 No. 346
(**c**) S.R. 1995 No. 201

General exemptions from the chill holding requirements

5. Regulation 4 shall not apply to—

(*a*) food which—

(i) has been cooked or reheated,

(ii) is for service or on display for sale, and

(iii) needs to be kept hot in order to control the growth of pathogenic micro-organisms or the formation of toxins;

(*b*) food which, for the duration of its shelf life, may be kept at ambient temperatures with no risk to health;

(*c*) food which is being or has been subjected to a process such as dehydration or canning intended to prevent the growth of pathogenic micro-organisms at ambient temperatures, but this paragraph shall cease to apply in circumstances where—

(i) after or by virtue of that process the food was contained in a hermetically sealed container, and

(ii) that container has been opened;

(*d*) food which must be ripened or matured at ambient temperatures, but this paragraph shall cease to apply once the process of ripening or maturation is completed;

(*e*) raw food intended for further processing (which includes cooking) before human consumption, but only if that processing, if undertaken correctly, will render that food fit for human consumption;

(*f*) food to which Council Regulation (EEC) No. 1906/90 on certain marketing standards for poultry, as amended(**a**), applies;

(*g*) food to which Council Regulation (EEC) No. 1907/90 on certain marketing standards for eggs, as amended(**b**), applies.

Upward variation of the 8°C temperature by manufacturers etc.

6.—(1) In any proceedings for an offence of contravening regulation 4(1), it shall be a defence for a person charged (for the purposes of this regulation called "the defendant") to prove that—

(*a*) a food business responsible for manufacturing, preparing or processing the food has recommended that it is kept—

(i) at or below a specified temperature between 8°C and ambient temperatures, and

(ii) for a period not exceeding a specified shelf life;

(*b*) that recommendation has, unless the defendant is that food business, been communicated to the defendant either by means of a label on the packaging of the food or by means of some other appropriate form of written instruction;

(**a**) O.J. No. L173, 6.7.90, p. 1; as amended by Council Regulation (EEC) No. 317/93 (O.J. No. L37, 18.2.93, p. 8) and Council Regulation (EC) No. 3204/93 (O.J. No. L289, 24.11.93, p. 3)

(**b**) O.J. No. L173, 6.7.90, p. 5; as amended by Council Regulation (EEC) No. 2617/93 (O.J. No. L240, 25.9.93, p. 1) and Council Regulation (EC) No. 3117/94 (O.J. No. L330, 21.12.94, p. 4)