1993 No. 173

FOOD

The Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 1993

Made	*2nd April 1993*
Coming into operation . .	*10th May 1993*

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by Articles 15(2), 16(1), 25(1)(*a*) and (3), 26(3), 32 and 47(2) of the Food Safety (Northern Ireland) Order 1991(**a**) and, being a designated Department(**b**) for the purposes of section 2(2) of the European Communities Act 1972(**c**) in relation to materials and articles in contact with food or drink or intended for such contact, in exercise of the powers conferred on it by the said section 2(2) 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 (in so far as the Regulations are made in exercise of the said Order), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Plastic Materials and Articles in Contact with Food Regulations (Northern Ireland) 1993 and shall come into operation on 10th May 1993.

(2) In these Regulations—

"the 1987 Regulations means the Materials and Articles in Contact with Food Regulations (Northern Ireland) 1987(**d**);

"capable" means capable as established under regulation 5;

"the Directive" means Commission Directive (EEC) No. 90/128 relating to plastic materials and articles intended to come into contact with foodstuffs(**e**) as amended(**f**);

"human consumption" has the same meaning as it has in the Order;

"import" means import in the course of a business;

"monomer" means anything which is included for the purposes of the Directive among monomers and other starting substances;

(**a**) 1991 No. 762 (N.I. 7). *See* Article 2(2) for the definitions of "regulations" and "the Department concerned"
(**b**) S.I. 1976/2141
(**c**) 1972 c. 68
(**d**) S.R. 1987 No. 432; the relevant amending Regulations are S.R. 1991 No. 203 and S.R. 1991 No. 344
(**e**) O.J. No. L349, 13.12.90, p. 26
(**f**) O.J. No. L168, 23.6.92, p. 21

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

"plastic material or article" means anything which for the purposes of the Directive is included among those plastic materials and articles and parts thereof to which the Directive applies;

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

(3) For the purposes of these Regulations the supply of any plastic material or article, otherwise than on sale, in the course of a business shall be deemed to be a sale of the plastic material or article.

(4) The Interpretation Act (Northern Ireland) 1954(**a**) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Restriction on sale etc, and importation of plastic materials and articles

2.—(1) No person shall use any plastic material or article which does not comply with these Regulations in the course of a business in connection with the storage, preparation, packaging, sale or serving of food included for human consumption.

(2) No person shall sell any plastic material or article which does not comply with these Regulations for the purpose of its being used in connection with the storage, preparation, packaging, sale or serving of food included for human consumption.

(3) No person shall sell, or import from any place other than a member State of the European Economic Community, any plastic material or article which does not comply with these Regulations for the purpose of its being used in connection with the storage, preparation, packaging, sale or serving of food for human consumption.

(4) In any proceedings for an offence under this regulation it shall be a defence for the person charged to prove that the plastic material or article in respect of which the offence is alleged to have been committed was intended for export and complied with the importing country's domestic legislation relevant to the alleged offence.

Transfer of constituents

3.—(1) No plastic material or article shall be capable of transferring its constituents to food with which it may come into contact in quantities exceeding the appropriate limit provided that a plastic material or article shall not be considered capable of transferring its constituents to food with which it may come into contact, in quantities exceeding the appropriate limit, if the only food which that plastic material or article may come into contact with is a food or foods specified in the Table to Part III of Schedule 2 in relation to which no simulant is specified.

(2) For the purposes of this regulation and regulation 4(5) no simulant is specified in relation to a food specified in the Table to Part III of Schedule 2 where there is no "X" placed in the column headed "Simulants to be used opposite that food.

(**a**) 1954 c. 33 (N.I.)

(3) For the purposes of this regulation the appropriate limit is—

(*a*) an overall migration limit of 60 milligrams of constituents released per kilogram of food in the case of any plastic material or article comprising—

(i) an article which is a container or is comparable to a container or which can be filled, with a capacity of not less than 500 millilitres and not more than 10 litres;

(ii) an article which can be filled and for which it is impracticable to estimate the surface area in contact with food;

(iii) a cap, gasket, stopper or similar device for sealing, and

(*b*) in the case of any other plastic material or article, an overall migration limit of 10 milligrams per square decimetre of the surface area of the plastic material or article.

Monomers

4.—(1) Subject to the following paragraphs no plastic material or article shall be manufactured with any monomer other than a monomer which is of good technical quality and is identified by PM REF No. (if any), CAS No. (if any) and name respectively in columns 1, 2 and 3 of the relevant fraction of Part I of Schedule 1 and used in accordance with the restrictions (if any) specified in the corresponding entry in column 4, and for the purposes of this regulation the relevant fraction of Part I comprises—

(*a*) in the case of a plastic material or article manufactured before 1st January 1997, Sections A and B of Part I, and

(*b*) in the case of a plastic material or article manufactured after 31st December 1996, Section A of Part I.

(2) Paragraph (1) does not apply to plastic materials or articles comprising—

(*a*) surface coatings obtained from resinous or polymerized products in liquid, powder or dispersion form, including, but not limited to, varnishes, lacquers and paints;

(*b*) silicones;

(*c*) epoxy resins;

(*d*) products obtained by means of bacterial fermentation;

(*e*) adhesives and adhesion promoters;

(*f*) printing inks.

(3) Paragraph (1) shall not be taken to prohibit the presence in any plastic material or article of any substance if the substance is a mixture of monomers of good technical quality identified in the relevant fraction of Part I of Schedule 1.

(4) Subject to the proviso in paragraph (5) where column 4 of the relevant fraction of Part I of Schedule 1 expresses a migration limit of mg/kg in relation to any monomer, no plastic material or article manufactured from that monomer shall be capable of transferring constituents of that monomer to food with which that plastic material or article may come into contact in

quantities exceeding the appropriate limit, and for the purposes of this paragraph the appropriate limit is—

(*a*) in the case of any plastic material or article other than one specified in sub-paragraph (*b*), the number of milligrams expressed therein released per kilogram of food, and

(*b*) if the plastic material or article comprises—

(i) an article which is a container or is comparable to a container or which can be filled, with a capacity of not less than 500 millilitres and not more than 10 litres, or

(ii) sheet, film or other material which cannot be filled or for which it is impracticable to estimate the relationship between the surface area of that material and the quantity of food in contact with that surface area,

one sixth of the number of milligrams expressed therein per square decimetre of surface area of the plastic material or article.

(5) A plastic material or article manufactured from any monomer in respect of which column 4 of the relevant fraction of Part I of Schedule 1 expresses a migration limit of mg/kg shall not be considered capable of transferring constituents of that monomer to food with which that plastic material or article may come into contact in quantities exceeding the appropriate limit in paragraph (4) if the only food which that plastic material or article may come into contact with is a food or foods specified in the Table to Part III of Schedule 2 in relation to which no simulant is specified.

(6) In any proceedings for an offence under regulation 3 comprising the manufacture of a plastic material or article with any monomer (whether or not of good technical quality) other than those identified in the relevant fraction of Part I of Schedule 1, it shall be a defence for the person charged to prove that—

(*a*) each such monomer is present in the finished plastic material as an impurity, a reaction intermediate or a decomposition product,

(*b*) each such monomer is an oligomer or a natural or synthetic macromolecular substance or a mixture thereof and every monomer required to synthesise it is of good technical quality and identified in the relevant fraction of Part I of Schedule 1, or

(*c*) each such monomer falls within either sub-paragraph (*a*) or sub-paragraph (*b*).

(7) Part II of Schedule 1 shall have effect to supplement this regulation and Part I of Schedule 1.

Method of testing capability of transferring constituents

5.—(1) Plastic material, for the purposes of these Regulations, shall be treated as being capable of transferring constituents to food with which it may come into contact to the extent that it is established for those purposes—

(*a*) in any case other than one to which sub-paragraph (*b*) relates, by the verification methods specified in Schedule 2, and

(*b*) in any case where the extent to which vinyl chloride, as identified in Section A of Part I of Schedule 1, is capable of such transfer falls to be established, by the method referred to in regulation 14(2) of the 1987 Regulations.

(2) In Schedule 2 references to migration or release of a substance shall be construed as references to the transfer of constituents to the simulant representing the food or, as the case may be, food with which it may come into contact.

Labelling

6.—(1) Subject to paragraph (2), any plastic material which is intended to be placed in contact with food and is at a marketing stage other than the retail stage shall be accompanied by a written declaration attesting that it complies with the legislation applicable to it.

(2) Paragraph (1) shall not apply to any plastic material or article which by its nature is clearly intended to come into contact with food.

Enforcement

7. Each district council shall enforce and execute these Regulations in its own district.

Offences

8.—(1) If any person contravenes any of the provisions of these Regulations he shall be guilty of an offence.

(2) Any person who—

(*a*) intentionally obstructs any person acting in the execution of these Regulations, or

(*b*) without reasonable cause, fails to give to any person acting in the execution of these Regulations any assistance or information which that person may reasonably require of him for the performance of his functions under these Regulations,

shall be guilty of an offence, but nothing in sub-paragraph (*b*) shall be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

(3) Any person who, in purported compliance with any such requirement as is mentioned in paragraph (2)(*b*)—

(*a*) furnishes information which he knows to be false or misleading in a material particular, or

(*b*) recklessly furnishes information which is false or misleading in a material particular,

shall be guilty of an offence.

(4) Where the commission by any person of an offence under these Regulations is due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first mentioned person.