1993 No. 52

FOOD

The Food Safety (Live Bivalve Molluscs and Other Shellfish) Regulations (Northern Ireland) 1993

Made . . . . . 9th February 1993

Coming into operation . . 17th March 1993

The Department of Health and Social Services in exercise of the powers conferred on it by Articles 15(1), 16(1), 25(1)(*b*) and (3), 26(3), 47(2), and 48(2) of, and paragraphs 2(2), 5(1) and (2), 6(1) and 7(1) of Schedule 1 to 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 that 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:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Food Safety (Live Bivalve Molluscs and Other Shellfish) Regulations (Northern Ireland) 1993 and shall come into operation on 17th March 1993.

(2) In these Regulations—

"batch" means a quantity of live bivalve molluscs collected from a production area and subsequently intended for delivery to an approved dispatch centre, purification centre, relaying area or processing plant;

"bivalve molluscs" means filter-feeding lamellibranch molluscs;

"clean sea water" means sea water or brackish water which is to be used under the conditions laid down in these Regulations and which is free from microbiological contamination and toxic and objectionable substances occurring naturally or after discharge in the environment, including those listed in the Annex to Directive 79/923/EEC(**b**), (quality required of shellfish waters), in such quantities as may adversely affect the health quality of bivalve molluscs or other shellfish or impair their taste;

"conditioning" means the storage in tanks or any other installation containing clean sea water, or in natural sites to remove sand, mud or slime;

(**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. L281, 10.11.79, p. 47

"consignment" means a quantity of live bivalve molluscs or other shellfish or both, handled in a dispatch centre or treated in a purification centre and subsequently intended for one or more customers;

"the Council Directive" means Council Directive 91/492/EEC(**a**), of 15th July 1991 laying down the health conditions for the production and the placing on the market of live bivalve molluscs;

"derogation" means the grant pursuant to the Derogations Regulations of a further period within which to comply fully with the conditions for the approval of dispatch centres and purification centres specified in the relevant section of the Schedule to the Derogations Regulations;

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

"designated bivalve production area" has the meaning given in regulation 2;

"dispatch centre" means any on-shore or off-shore installation for the reception, conditioning, washing, cleaning, grading or wrapping of live bivalve molluscs or other shellfish or both for human consumption;

"E. coli" means faecal coliforms which also form indole from tryptophan at 44°C ± 0.2°C within 24 hours;

"establishment" includes a dispatch centre, a purification centre or a processing plant;

"faecal coliform" means facultative, aerobic, gram-negative, non-sporeforming, cytochrome oxidase negative, rod-shaped bacteria that are able to ferment lactose with gas production in the presence of bile salts, or other surface active agents with similar growth-inhibiting properties at 44°C ± 0.2°C within at least 24 hours;

"final consumer" means a person who buys live bivalve molluscs or other shellfish—

(*a*) for his own consumption or consumption by his partner, family or other person in a solely domestic context;

(*b*) for direct transport to, and consumption on, premises either in his ownership or under his personal supervision or in the ownership or under the personal supervision of a person employed by him; or

(*c*) for cooking on premises either in his ownership or under his personal supervision or in the ownership or under the personal supervision of a person employed by him for sale as take-away food for consumption off those premises;

"gatherer" means any person who collects live bivalve molluscs or other shellfish by any means from a harvesting area for the purpose of handling and placing on the market;

(**a**) O.J. No. L268, 24.9.92, p. 1
(**b**) S.R. 1992 No. 295

"healthmark" means a certificate in the form specified in paragraph 1 of Schedule 1 containing the information specified in that form and that Schedule as required by regulation 10(1)(*h*);

"laying" means a foreshore, bed, pond, pit, ledge, float or similar place including a relaying area where bivalve molluscs or other shellfish are liable to be taken, harvested or deposited;

"marine biotoxins" means poisonous substances accumulated by bivalve molluscs feeding on plankton containing toxin;

"means of transport" means those parts of road or rail vehicles, aircraft or ships, including containers and trailers used in conjunction with any such transport, constructed or adapted for the transport of goods;

"movement document" means a document in the form specified in Schedule 2 containing the information specified in that form and that Schedule as required by regulation 10(1)(*b*);

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

"other shellfish" means live echinoderms, tunicates and marine gastropods;

"permanent transport authorisation" means a written authorisation issued pursuant to regulation 10(1)(*b*) and in accordanace with the form and procedure prescribed in paragraph 6(8) of Schedule 2;

"placing on the market" means, in relation to live bivalve molluscs or other shellfish for human consumption, whether raw or for the purpose of processing, the holding, exposure, displaying for sale, offering for sale, selling, consigning, delivering or any other associated activities of marketing;

"potable water" means water within the meaning of Directive 80/778/EEC(**a**) (the quality of water intended for human consumption);

"private laying" means a laying where live bivalve molluscs or other shellfish are usually harvested or deposited by the owner or by a tenant of the laying and "tenant" includes any person authorised by the owner or by a tenant of that laying so to harvest or deposit;

"production area" means any sea, estuarine or lagoon area containing either natural deposits of bivalve molluscs or sites used for the cultivation of bivalve molluscs including relaying areas from which live bivalve molluscs are taken;

"public laying" means a laying which is not a private laying;

"purification centre" means an establishment with tanks fed by naturally clean sea water or sea water that has been cleaned by appropriate treatment, in which live bivalve molluscs are placed for the time necessary to remove microbiological contamination, so making them fit for human consumption;

(**a**) O.J. No. L229, 30.8.80, p. 11. Directive last amended by Directive 91/377/EEC (O.J. No. 377, 31.12.91, p. 48)

"relaying" means a transfer of live molluscs to an area of sea, estuary or lagoon for the purpose of removing any contamination, for the time necessary to remove such contamination, but does not include transfers to areas more suitable for further growth or fattening;

"relaying area" means any area of sea, estuary or lagoon within boundaries clearly marked and indicated by buoys, posts or any other fixed means and which is used exclusively for the natural purification of live bivalve molluscs;

"wrapping" means the placing of a live bivalve mollusc in packaging material adequate for the purpose.

(3) For the purpose of these Regulations a live bivalve mollusc or other shellfish shall be treated as if it is a food or food source even though it is usually supplied alive to the final consumer.

(4) For the purposes of these Regulations the Schedule to the Derogations Regulations shall be construed as follows:

(*a*) references to the competent authority in paragraph 4 of Section III and paragraph 1(*a*) of Section IV of that Schedule shall be taken to be references to the Department;

(*b*) references to the competent authority in paragraph 11 of Section III and paragraphs 3 and 4 of Section IV of that Schedule shall be taken to be references to the district council;

(*c*) the reference to the competent authority in paragraph 12 of Section III of that Schedule shall be taken to be a reference to the district council or a person authorised by the Department;

(*d*) references to Chapter V shall be taken to be references to Schedule 5 to these Regulations;

(*e*) references to the registration document referred to in Chapter II, point 6 shall be taken to be references to a movement document or, where the requirements of paragraph 6 of Schedule 2 to these Regulations are met, to a permanent transportation authorisation;

(*f*) the period laid down in paragraph 4 of Section IV for the preservation of data is six months.

Designation of certain areas

2.—(1) The Department shall designate sea waters and brackish waters from which live bivalve molluscs may be taken in accordance with the requirements of these Regulations, referred to in these Regulations as "designated bivalve production areas," and shall specify as respects each area of water designated by it whether it is—

(*a*) a class A area from which molluscs can be gathered as specified in Part 1 of Schedule 3;

(*b*) a class B area from which molluscs can be gathered as specified in Part 2 of Schedule 3;

(*c*) a class C area from which molluscs can be gathered as specified in Part 3 of Schedule 3,

and any such designation may be made subject to any limitation, condition or restriction as the Department thinks fit.

(2) Each district council shall designate as a relaying area any area within its district which—

(*a*) has been designated as being a class A or B area in accordance with Schedule 3, and

(*b*) in its opinion is suitable for the relaying of live bivalve molluscs if the conditions specified in Parts 2 and 3 of Schedule 3 and in Schedule 4 are satisfied,

and, where the Department has notified the district council that specified conditions relating to the matters mentioned in Schedule 4 should be complied with in operating the relaying area, the district council shall make that designation subject to those conditions.

(3) The district council shall notify the Department of any designation made under paragraph (2) and of its terms.

(4) The Department shall maintain and publish—

(*a*) a list of designated bivalve mollusc production areas, and

(*b*) a list of any areas which district councils have designated as suitable for relaying,

and amendments to these lists shall be published from time to time.

(5) The Department shall send a copy of the list, and of any amendments to it, to each district council and to any other person of whom they are aware who, in its view, is directly affected by these Regulations.

(6) Each district council shall take such action as it considers sufficient to bring the relevant part of such list to the attention of any harvester, handler, and operator of either a purification centre or dispatch centre in its area.

Areas unsuitable for production or harvesting

3. The Department may at any time designate any area as an area unsuitable for production or harvesting of live bivalve molluscs or other shellfish, or both, and any such area shall be described as appropriate as a ''designated prohibited area for bivalve mollusc production'', a ''designated prohibited area for other shellfish production'', or a ''designated prohibited area for live bivalve molluscs and other shellfish production''.

Alterations to designated areas

4.—(1) Subject to paragraph (3) the Department may at any time—

(*a*) vary the boundary of any area designated under regulation 2(1) or 3,

(*b*) impose limitations, restrictions or conditions on the use of any area designated under regulation 2(1) or 3,

(*c*) alter the class of any area within a designated bivalve production area,

(*d*) vary the designation of any area designated under regulation 3,

for such period as it thinks fit, and shall communicate such amendment to the district council and to persons who appear to be affected.