1992 No. 416

FOOD

The Flavourings in Food Regulations (Northern Ireland) 1992

Made . . . . . 28th September 1992

Coming into operation . . 2nd November 1992

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by Articles 15(1)(*a*) and (*e*), 25(1) and (3), 26(3) and 47(2) of, and paragraph 1 of Schedule 1 to, 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(**c**) in relation to the presentation and packaging of food intended for sale for human consumption, in exercise (so far as is required for the amendment of Regulations made under the said section 2(2)) 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 powers conferred by the said Order), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Flavourings in Food Regulations (Northern Ireland) 1992 and shall come into operation on 2nd November 1992.

(2) In these Regulations—

(*a*) "flavouring" means material used or intended for use in or on food to impart odour, taste or both;

(*b*) "relevant flavouring" means flavouring which does not consist entirely of excepted material and the components of which include at least one of the following—

(i) a flavouring substance;

(ii) a flavouring preparation;

(iii) a process flavouring;

(iv) a smoke flavouring;

(**a**) S.I. 1991/762 (N.I. 7). *See* Article 2(2) for the definitions of "regulations" and "the Department concerned"

(**b**) Designated by S.I. 1981/833

(**c**) 1972 c. 68

(*c*) "flavouring substance" means a chemical substance with flavouring properties the chemical structure of which has been established by methods normally used among scientists and which is—

(i) obtained by physical, enzymatic or microbiological processes from appropriate material of vegetable or animal origin;

(ii) either obtained by chemical synthesis or isolated by chemical processes and which is chemically identical to a substance naturally present in appropriate material of vegetable or animal origin; or

(iii) obtained by chemical synthesis but not included under head (ii);

(*d*) "flavouring preparation" means a product (other than a flavouring substance), whether concentrated or not, with flavouring properties which is obtained by physical processes or by enzymatic or microbiological processes from appropriate material of vegetable or animal origin;

(*e*) "process flavouring" means a product which is obtained according to good manufacturing practices by heating to a temperature not exceeding 180°C for a continuous period not exceeding 15 minutes a mixture of ingredients (whether or not with flavouring properties) of which at least one contains nitrogen (amino) and another is a reducing sugar;

(*f*) "smoke flavouring" means an extract from smoke of a type normally used in food smoking processes; and

(*g*) "permitted flavouring" means a relevant flavouring which complies with the general purity criteria in Schedule 1.

(3) For the purposes of paragraph (2)—

(*a*) distillation and solvent extraction shall be regarded as included among types of physical process;

(*b*) material of vegetable or animal origin is appropriate material of vegetable or animal origin if it either is raw or has been subjected to a process normally used in preparing food for human consumption and to no process other than one normally so used; and

(*c*) drying, torrefaction and fermentation shall be treated as included among the types of process normally so used to which sub-paragraph (*b*) refers.

(4) In these Regulations—

"food'" has the same meaning as in the Order, except that it is limited to food intended for sale for human consumption;

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

"sell" includes possess for sale, or offer or expose for sale, and in relation to relevant flavourings—

(*a*) "consumer sale" means a sale of them—

(i) to the ultimate consumer, or

(ii) in a container in which they are ready for delivery to the ultimate consumer, and

(*b*) "business sale" means a sale of them other than a consumer sale;

"specified substance" means a substance mentioned in column 1 of Schedule 2; and

"ultimate consumer" has the meaning which it has in the Food Labelling Regulations (Northern Ireland) 1984(**a**).

(5) For the purposes of these Regulations—

(*a*) any edible substance (including herbs and spices) or product, intended for human consumption as such, with or without reconstitution, and

(*b*) any substance which has exclusively a sweet, sour or salt taste,

comprises excepted material.

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

Sale etc. of food containing flavourings

2.—(1) No food shall be sold which has in it or on it any added relevant flavouring other than a permitted flavouring.

(2) No food sold which has in it or on it any relevant flavouring shall contain by virtue of the presence of that relevant flavouring a proportion of 3, 4-benzopyrene greater than $x + 0{\cdot}03$ μg per kilogram of the food, where x μg of 3, 4-benzopyrene per kilogram of the food is the proportion thereof otherwise occurring in the food, and for the purpose of this paragraph x is capable of representing nil as well as any other quantity.

(3) No food sold which has in it or on it any relevant flavouring shall have in it or on it any specified substance which has been added as such.

(4) No food sold which has in it or on it any relevant flavouring shall contain any specified substance other than a specified substance which is present in the food—

(*a*) naturally, or

(*b*) as a result of the inclusion of the relevant flavouring where that relevant flavouring is prepared from natural raw materials.

(5) No food sold which has in it or on it any relevant flavouring shall contain a proportion greater than the permitted proportion of any specified substance except where the proportion of the specified substance in the food is no greater than it would have been had the food not had the relevant flavouring in it or on it.

(6) For the purpose of paragraph (5) the permitted proportion of any specified substance mentioned in a paragraph of column 1 of Schedule 2 is—

(*a*) except in the case of any description of food mentioned in the corresponding paragraph of column 3, the standard permitted proportion specified in the corresponding paragraph of column 2, and

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(**a**) S.R. 1984 No. 407; the relevant amending Regulations are S.R. 1990 No. 440 and S.R. 1991 No. 203
(**b**) 1954 c. 33 (N.I.)

(*b*) in the case of any description of food mentioned in the corresponding paragraph of column 3, the proportion specified for it in that paragraph.

(7) No person shall sell any food which does not comply with this regulation.

Sale, advertisement and labelling of flavourings

3.—(1) No person shall sell or advertise for sale any relevant flavouring to any person for use as an ingredient in the preparation of food unless the relevant flavouring is a permitted flavouring.

(2) No person shall make a business sale of any relevant flavourings to any person for use as ingredients in the preparation of food unless the relevant flavourings are in a container and the requirements for business sales of relevant flavourings are observed in relation to that sale.

(3) No person shall after 31st December 1993 make a consumer sale of any relevant flavourings to any person unless the relevant flavourings are in a container and the requirements for consumer sales of relevant flavourings are observed in relation to that sale.

(4) Schedule 3 shall have effect for the purposes of establishing when the requirements relating to any sale to which this regulation applies are observed in relation to that sale.

Use of the word "natural" and similar expressions

4.—(1) The word "natural", or any word having substantially the same meaning, shall not be used in a business sale of any relevant flavouring to describe that relevant flavouring unless—

(*a*) it is used in compliance with the requirements of Schedule 3, or

(*b*) that relevant flavouring is a permitted flavouring the flavouring components of which are exclusively comprised of flavouring substances which come within regulation 1(2)(*c*)(i), flavouring preparations or both.

(2) The word "natural", or any word having substantially the same meaning, shall not be used in a business sale of any relevant flavouring to qualify any substance used in its preparation unless that relevant flavouring is a permitted flavouring the flavouring component of which has been isolated solely, or almost solely, from that substance by physical processes, enzymatic or microbiological processes or processes normally used in preparing food for human consumption.

(3) No person shall make a business sale of any relevant flavouring to any person for use as an ingredient in the preparation of food in contravention of the requirements of this regulation.

Condemnation of food

5. Where any food is certified by a public analyst as being food which it is an offence against regulation 2 or 3(1) 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.

Penalties and enforcement

6.—(1) If any person contravenes any of the foregoing provisions of these Regulations he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,000.

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

Defence in relation to exports

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

Application of various provisions of the Order

8. The following provisions of the Order shall apply for the purposes of these Regulations as they apply for the purposes of Article 7, 13 or 14 of the Order and, unless the context otherwise requires, any reference in them 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 (presumption that food is 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).

Amendment of the Arsenic in Food Regulations (Northern Ireland) 1961

9. The Arsenic in Food Regulations (Northern Ireland) 1961(**a**) shall be amended by the insertion immediately after item 12 in the Schedule to those Regulations of the following—

In column 1	In column 2
(description of food)	*(proportions of arsenic expressed in terms of parts per million estimated by weight*
"12.A. Flavourings	3·0"

Amendment of the Lead in Food Regulations (Northern Ireland) 1979

10. The Lead in Food Regulations (Northern Ireland) 1979(**b**) shall be amended by deleting item 4 (flavourings) from Part II of Schedule 1 to those Regulations and inserting immediately after item 40 in Part I of that Schedule the following—

(**a**) S.R. & O. (N.I.) 1961 No. 98, to which there are amendments not relevant to these Regulations
(**b**) S.R. 1979 No. 407, to which there are amendments not relevant to these Regulations