
STATUTORY RULES OF NORTHERN IRELAND

2010 No. 321

The Materials and Articles in Contact with
Food Regulations (Northern Ireland) 2010

PART 5

General

Offences and penalties

13.—(1) Any person who —

- (a) contravenes the provisions of regulation 8, 10(3), (4), (6), (7) or (8) or 11(1) or (3);
- (b) intentionally obstructs any person acting in the execution of Regulation 1935/2004, Regulation 2023/2006, Regulation 450/2009 or these Regulations or, without reasonable excuse, fails to provide any assistance or information that person may reasonably require; or
- (c) in purported compliance with any requirement mentioned in sub-paragraph (b), knowingly or recklessly supplies information that is false or misleading in any material particular,

is guilty of an offence.

(2) Any person guilty of an offence under these Regulations is liable —

- (a) in the case of an offence mentioned in paragraph (1)(a) or (c) or in regulation 4, 5 or 6 —
 - (i) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or both; or
 - (ii) on summary conviction to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 6 months or both; and
- (b) in the case of an offence mentioned in paragraph (1)(b) on summary conviction to a term of imprisonment not exceeding 3 months or to a fine not exceeding level 5 on the standard scale or both.

(3) Nothing in paragraph (1)(b) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate them.

Enforcement

14.—(1) Each district council in its district must execute and enforce —

- (a) the provisions of Regulation 1935/2004 specified in regulation 4;
- (b) the provisions of Regulation 450/2009 specified in regulation 6; and
- (c) except in relation to the provisions referred to paragraph (3), these Regulations.

(2) The Food Standards Agency may also execute and enforce the provisions of —

- (a) Articles 16(1) and 17(2) of Regulation 1935/2004; and

(b) Article 13 of Regulation 450/2009.

(3) Each district council in its district must execute and enforce the provisions of Regulation 2023/2006 specified in regulation 5.

Offences due to the act or default of a third party

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

Time limit for prosecutions

16. A prosecution for an offence under these Regulations must not be begun after the expiry of three years from the commission of the offence or one year from its discovery by the prosecution, whichever is the earlier.

General defences

17.—(1) In any proceedings for an offence under these Regulations it is, subject to paragraph (5), a defence to prove that the person accused (“the accused”) took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the accused or by a person under the control of the accused.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under regulation 4, 6(a) to (f) or 13(1)(a) who did not —

- (a) prepare the material or article in respect of which the offence is alleged to have been committed; nor
- (b) import it into the United Kingdom,

is to be taken to have established the defence provided by paragraph (1) if the requirements of paragraphs (3) or (4) are satisfied.

(3) The requirements of this paragraph are satisfied if it is proved that —

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reliance on information supplied by such a person;
- (b) either —
 - (i) the accused carried out all such checks of the material or article in question as were reasonable in all the circumstances, or
 - (ii) it was reasonable in all the circumstances for the accused to rely on checks carried out by the person who supplied the accused with that material or article; and
- (c) the accused did not know and had no reason to suspect at the time the offence was committed that the act or omission would amount to an offence under these Regulations.

(4) The requirements of this paragraph are satisfied if the offence is one of sale and it is proved that —

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reliance on information supplied by such a person;
- (b) the sale of which the offence consisted was not a sale under the name or mark of the accused; and

- (c) the accused did not know and could not reasonably be expected to know at the time the offence was committed that the act or omission would amount to an offence under these Regulations.

(5) If in any case the defence provided by this regulation involves the allegation that the commission of the offence was due to the act or default of another person, or to reliance on information supplied by another person, the accused must not without leave of the court be entitled to rely on that defence unless —

- (a) at least seven clear days before the hearing; and
- (b) where the accused has previously appeared before the court in connection with the alleged offence, within one month of his first such appearance,

the accused has served on the prosecution a notice in writing giving such information identifying or assisting in the identification of that other person as was then in the possession of the accused.

Procedure where a sample is to be analysed

18.—(1) An authorised officer who has procured a sample under Article 29 of the Order and who considers it should be analysed must divide the sample into three parts.

(2) If the sample consists of sealed containers and opening them would, in the opinion of the authorised officer, impede a proper analysis, the authorised officer must divide the sample into parts by putting the containers into three lots, and each lot must be treated as being a part.

- (3) The authorised officer must —
 - (a) if necessary place each part in a suitable container and seal it;
 - (b) mark each part or container;
 - (c) as soon as is reasonably practicable, give one part to the owner and notify the owner in writing that the sample will be analysed;
 - (d) submit one part for analysis in accordance with Article 30 of the Order; and
 - (e) retain one part for future submission under regulation 19.

Secondary analysis by the Government Chemist

19.—(1) Where a sample has been retained under regulation 18 and —

- (a) proceedings are intended to be or have been commenced against a person for an offence under these Regulations; and
- (b) the prosecution intends to adduce as evidence the result of the analysis mentioned above,

paragraphs (2) to (7) apply.

- (2) The authorised officer —
 - (a) may of the officer's own volition; or
 - (b) must —
 - (i) if requested by the prosecutor (if a person other than the authorised officer);
 - (ii) if the court so orders; or
 - (iii) (subject to paragraph (6)) if requested by the defendant,

send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist must analyse the part sent under paragraph (2) and send to the authorised officer a certificate specifying the results of the analysis.

(4) Any certificate of the results of analysis transmitted by the Government Chemist must be signed by or on behalf of the Government Chemist, but the analysis may be carried out by any person under the direction of the person who signs the certificate.

(5) The authorised officer must immediately on receipt supply the prosecutor (if a person other than the authorised officer) and the defendant with a copy of the Government Chemist's certificate of analysis.

(6) Where a request is made under paragraph (2)(b)(iii) the authorised officer may give notice in writing to the defendant requesting payment of a fee specified in the notice to defray some or all of the Government Chemist's charges for performing the functions under paragraph (3), and in the absence of agreement by the defendant to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

(7) In this regulation "defendant" includes a prospective defendant.

Application of various provisions of the Order

20.—(1) The following provisions of the Order apply for the purposes of these Regulations with the modification that any reference in those provisions to the Order or Part thereof must be construed as a reference to these Regulations —

(a) Article 2(4) (extending meaning of "sale" etc);

(b) Article 30(8) (which relates to documentary evidence).

(2) In the application of Article 33 of the Order (powers of entry) for the purposes of these Regulations, the reference in paragraph (1) to the Order must be construed as including a reference to Regulation 1935/2004, Regulation 2023/2006 or Regulation 450/2009 as appropriate.

(3) Article 4 of the Order (presumptions that food is intended for human consumption) applies for the purposes of these Regulations with the modification that any reference in those provisions to the Order must be construed as including a reference to Regulation 1935/2004, Regulation 2023/2006 or Regulation 450/2009 as appropriate, and to these Regulations and that the references to "sold", and "sale" are deemed to include references to "placed on the market" and "placing on the market" respectively.

Consequential amendment to the Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991

21. In the Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991(1), in Schedule 1 (provisions to which those Regulations do not apply) for the title and reference of the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2007 substitute the title and reference of these Regulations.

Consequential amendment to the 2009 Regulations

22.—(1) The 2009 Regulations are amended in accordance with paragraphs (2) and (3).

(2) In regulation 2 (1) (interpretation) omit the definition of "the 2007 Regulations".

(3) In regulation 13(1)(b) (method of testing the capability of plastic materials or articles to transfer constituents, and methods of analysis), for the expression "regulation 9(2) of the 2007 Regulations" substitute "regulation 9(2) of the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2010".

(1) [S.R. 1991 No.198](#), amended by [S.R. 2007 No. 434](#); there are other amending rules but none is relevant

Amendment to the Food Labelling Regulations (Northern Ireland) 1996

23.—(1) The Food Labelling Regulations (Northern Ireland) 1996⁽²⁾ are amended in accordance with paragraph (2).

(2) In regulation 2(1) (interpretation), for the definition of “ingredient” substitute —

““ingredient” means —

- (a) any substance, including any additive or food enzyme and any constituent of a compound ingredient, which is used in the preparation of a food and which is still present in the finished product, even if in altered form; or
- (b) any released active substance within the meaning of Article 3(f) of [Commission Regulation \(EC\) No. 450/2009](#) on active and intelligent materials and articles intended to come into contact with food,

and a “compound ingredient” must be composed of two or more such substances;”.

Revocations

24. The following are revoked —

- (a) The Materials and Articles in Contact with Food Regulations (Northern Ireland) 2007⁽³⁾;
- (b) Regulation 25 of the 2009 Regulations; and
- (c) The Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 2009⁽⁴⁾.

⁽²⁾ [S.R. 1996 No. 383](#) The definition of ingredient was previously amended by [S.R. 2009 No. 415](#)

⁽³⁾ [S.R. 2007 No. 434](#)

⁽⁴⁾ [S.R. 2009 No. 377](#)