

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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SCHEDULE

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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

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(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);

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(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.

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

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<sup>(a)</sup> 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)

<sup>(b)</sup> 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)

(c) the food was not kept by the defendant at a temperature above the specified temperature; and

(d) at the time of the commission of the alleged offence, the specified shelf life had not been exceeded.

(2) A food business responsible for manufacturing, preparing or processing food shall not recommend that any food is kept—

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

(b) for a period not exceeding a specified shelf life,

unless that recommendation is supported by a well-founded scientific assessment of the safety of the food at the specified temperature.

#### *Chill holding tolerance periods*

7.—(1) In any proceedings for an offence of contravening regulation 4(1), it shall be a defence for a person charged to prove that the food—

(a) was for service or on display for sale;

(b) had not previously been kept for service or on display for sale at a temperature above 8°C or, in appropriate circumstances, the recommended temperature; and

(c) had been kept for service or on display for sale for a period of less than four hours.

(2) In any proceedings for an offence of contravening regulation 4(1), it shall be a defence for the person charged to prove that the food—

(a) was being transferred—

(i) to a vehicle used for the purposes of the activities of a food business from, or

(ii) from a vehicle used for the purposes of the activities of a food business to,

premises (which includes vehicles) at which the food was going to be kept at or at below 8°C or, in appropriate circumstances, the recommended temperature; or

(b) was kept at a temperature above 8°C or, in appropriate circumstances, the recommended temperature for an unavoidable reason, such as—

(i) to accommodate the practicalities of handling during and after processing or preparation,

(ii) the defrosting of equipment, or

(iii) temporary breakdown of equipment,

and was kept at a temperature above 8°C or, in appropriate circumstances, the recommended temperature for a limited period only and that period was consistent with food safety.

#### *Hot holding requirements*

8. No person shall in the course of the activities of a food business keep any food which—

(a) has been cooked or reheated;

- (b) is for service or on display for sale; and
  - (c) needs to be kept hot in order to control the growth of pathogenic micro-organisms or the formation of toxins,
- at or in food premises at a temperature below 63°C.

#### *Hot holding defences*

9.—(1) In any proceedings for an offence of contravening regulation 8, it shall be a defence for a person charged to prove that—

- (a) a well-founded scientific assessment of the safety of the food at temperatures below 63°C has concluded that there is no risk to health if, after cooking or reheating, the food is held for service or on display for sale—
  - (i) at a holding temperature which is below 63°C, and
  - (ii) for a period not exceeding a specified period of time; and
- (b) at the time of the commission of the alleged offence, the food was held in a manner which is justified in the light of that scientific assessment.

(2) In any proceedings for an offence of contravening regulation 8, it shall be a defence for a person charged to prove that the food—

- (a) had been kept for service or on display for sale for a period of less than 2 hours; and
- (b) had not previously been kept for service or on display for sale by that person.

#### *General requirement for food which is a risk to health*

10.—(1) Subject to paragraph (2), no person shall in the course of the activities of a food business keep foodstuffs which are—

- (a) raw materials, ingredients, intermediate products or finished products; and
- (b) likely to support the growth of pathogenic micro-organisms or the formation of toxins,

at temperatures which would result in a risk to health.

(2) Consistent with food safety, limited periods outside temperature control are permitted where necessary to accommodate the practicalities of handling during preparation, transport, storage, display and service of food.

(3) A person may contravene paragraph (1) notwithstanding that he complies with the requirements of regulations 4 and 8, and in particular the keeping of perishable foodstuffs at above a maximum storage temperature recommended in any special storage conditions for them may be in contravention of paragraph (1) notwithstanding that they are kept at a temperature of 8°C or below.

#### *Cooling of food*

11. A food business responsible for cooling any food which must, by virtue of this Part, be kept at a temperature below ambient temperatures shall cool that food as quickly as possible following—

- (a) the final heat processing stage; or
- (b) if no heat process is applied, the final preparation stage, to the temperature at which, by virtue of this Part, it must be kept.

*Guides to good hygiene practice*

12. For the purposes of regulations 6(2) and 9(1), the presence of a scientific assessment of the safety of any food in a guide to good hygiene practice which has been—

- (a) forwarded by the Department to the Commission pursuant to Article 5.5 of the Directive, unless the Department has announced that the guide no longer complies with Article 3 of the Directive; or
- (b) developed in accordance with Article 5.6 and 7 of the Directive and published in accordance with Article 5.8 of the Directive,

shall, until the contrary is proved, be considered sufficient evidence that the scientific assessment in question is well-founded.

### PART III

#### PENALTIES, ENFORCEMENT AND REVOCATIONS

*Offences and penalties*

13.—(1) If any person contravenes regulation 4, 6(2), 8, 10 or 11 he shall be guilty of an offence against these Regulations.

(2) Any person guilty of an offence against these Regulations shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum;
- (b) on conviction on indictment, to a fine or imprisonment for a term not exceeding 2 years or both.

*Application of provisions of the Order*

14. The following provisions of the Order shall apply for the purposes of these Regulations as they apply for the purposes of Articles 7, 13 and 14 of the Order, and a reference in them to the Order shall be construed as a reference to these Regulations—

- (a) Articles 2(4) and 3 (extended meaning of “sale” etc.);
- (b) Article 4 (presumptions that food intended for human consumption);
- (c) Article 19 (offences due to fault of another person);
- (d) Article 20 (defence of due diligence);
- (e) Article 30(8) (which relates to documentary evidence);
- (f) Article 34 (obstruction etc. of officers);
- (g) Article 35 (time limit for prosecutions).



*Enforcement and execution*

15.—(1) Each district council shall enforce and execute these Regulations within its district.

(2) In enforcing and executing these Regulations, a district council shall—

- (a) ensure that food premises are inspected with a frequency which has regard to the risk associated with those premises; and
- (b) without prejudice to regulation 12, give due consideration to whether the proprietor of a food business has acted in accordance with any relevant guide to good hygiene practice which has been—
  - (i) forwarded by the Department to the Commission pursuant to Article 5.5 of the Directive, unless the Department has announced that it no longer complies with Article 3 of the Directive, or
  - (ii) developed in accordance with Article 5.6 and 7 of the Directive and published in accordance with Article 5.8 of the Directive.

*Revocations*

16. The Regulations specified in column (1) of the Schedule are hereby revoked to the extent specified in column (3) of the Schedule.

Sealed with the Official Seal of the Department of Health and Social Services on 3rd October 1995.

(L.S.)

*D. A. Baker*

Assistant Secretary

## Revocations

(1) <i>Regulations revoked</i>	(2) <i>References</i>	(3) <i>Extent of revocation</i>
The Food Hygiene (General) Regulations (Northern Ireland) 1964	S.R. & O. (N.I.) 1964 No. 129	The whole Regulations
The Food (Revision of Penalties and Mode of Trial) Regulations (Northern Ireland) 1987	S.R. 1987 No. 38	The reference in Schedule 2 to the Food Hygiene (General) Regulations (Northern Ireland) 1964
The Food Hygiene (General) (Amendment) Regulations (Northern Ireland) 1990	S.R. 1990 No. 301	The whole Regulations
The Food Hygiene (General) (Amendment) Regulations (Northern Ireland) 1991	S.R. 1991 No. 383	The whole Regulations
The Food Safety (Fishery Products) (Import Conditions and Miscellaneous Amendments) Regulations (Northern Ireland) 1995	S.R. 1995 No. 113	Regulation 5
The Food Safety (General Food Hygiene) Regulations (Northern Ireland) 1995	S.R. 1995 No. 360	The references in Schedule 3 to the Food Hygiene (General) Regulations (Northern Ireland) 1964 and the Food Hygiene (General) (Amendment) Regulations (Northern Ireland) 1990

## EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations implement paragraphs 4 and 5 of Chapter IX of the Annex to Council Directive 93/43/EEC of 14th June 1993 on the hygiene of foodstuffs, as well as containing certain national provisions relating to food temperature control.

Regulation 2 is an interpretation provision. Regulation 3 deals with the application of these Regulations: they apply to all stages of food production except primary production, but — subject to an exception which relates to fishery products — they do not apply to the activities of food businesses which are regulated by or under the Regulations listed in regulation 3(2).

Part II of the Regulations contains new food temperature control requirements. Regulation 4 contains a requirement that food which needs to be kept chilled because it is likely to support the growth of pathogenic micro-organisms or the formation of toxins must be kept either at or at below 8°C, although this does not apply to mail order food, which is the subject of a separate offence. There are certain exemptions (regulation 5), and a provision which allows for the upward variation of the standard temperature in appropriate circumstances (regulation 6(1)). Any such variation must, however, be based on a well-founded scientific assessment of the safety of the food at the new temperature (regulation 6(2)). There are also defences which relate to the tolerance periods for which food may be held outside temperature control (regulation 7).

Regulation 8 contains a requirement that food which needs to be kept hot in order to control the growth of pathogenic micro-organisms or the formation of toxins must be kept at a minimum temperature of 63°C. There are defences which allow for downward variation of this minimum temperature in appropriate circumstances and for a tolerance period of two hours (regulation 9).

Regulation 10 adds a new general temperature control requirement which prohibits keeping perishable foodstuffs at temperatures which would result in a risk to health, and regulation 11 contains a further requirement in relation to the cooling of food. Regulation 12 deals with the evidential value, in certain circumstances, of guides to good hygiene practice.

Regulation 13 deals with offences and penalties, regulation 14 applies certain provisions of the Food Safety (Northern Ireland) Order 1991, and regulation 15 deals with enforcement issues.

Regulation 16 is a revocations provision. The provisions revoked are listed in the Schedule.