

**2005 No. 76**

**FOOD**

**The Smoke Flavourings Regulations (Northern Ireland) 2005**

*Made - - - - - 9th March 2005*

*Coming into operation in accordance with regulation 1*

The Department of Health, Social Services and Public Safety(**a**) in exercise of the powers conferred on it by Articles 15(1)(a), (c), (e), (f) and (3), 16(2), 25(1) and (3), 26(3) and 47(2) of, and paragraph 1 of Schedule 1 to, the Food Safety (Northern Ireland) Order 1991(**b**) and of all other powers enabling it in that behalf, having had regard in accordance with Article 47(3A) of the said Order to relevant advice given by the Food Standards Agency and after consultation as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety(**c**), hereby makes the following Regulations:

**Citation and commencement**

**1.** These Regulations may be cited as the Smoke Flavourings Regulations (Northern Ireland) 2005 and shall come into operation –

- (i) in the case of regulation 3 and regulations 1 and 2 insofar as they relate to regulation 3 on 1st April 2005;
- (ii) otherwise, on 16th June 2005.

**Interpretation**

**2.—(1)** In these Regulations –

“the Order” means the Food Safety (Northern Ireland) Order 1991;

“Regulation 2065/2003” means Regulation (EC) No. 2065/2003 of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods(**d**);

“specified Community provision” means a provision of Regulation 2065/2003 specified in column 1 and described in column 2 of the Schedule to these Regulations.

(2) Other expressions used in these Regulations and in Regulation 2065/2003 have the same meanings in these Regulations as in Regulation 2065/2003.

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(a) Formerly the Department of Health and Social Services; *see* S.I. 1999/283 (N.I. 1), Article 3(6)  
(b) S.I. 1991/762 (N.I.7) as amended by S.I. 1996/1633 (N.I. 12) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c. 28  
(c) O.J. No. L31, 1.2.2002, p. 1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L245, 29.9.2003, p. 4). By virtue of regulation 5 of the Food Safety (Northern Ireland) Order 1991 (Amendment) Regulations (Northern Ireland) 2004 (S.R. 2004 No. 482), with effect from 7th December 2004 the consultation requirement contained in Article 47(3) of the 1991 Order is disappplied in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002  
(d) O.J. No. L309, 26.11.2003, p. 1

### **Administration of Regulation 2065/2003**

3. The national competent authority for the purposes of Article 7 of Regulation 2065/2003 (application for authorisation) shall be the Food Standards Agency<sup>(a)</sup>.

### **Condemnation of food**

4.—(1) Where, in relation to any food, a contravention of any of Articles 4.2, 5.1, 5.2, 9.4 or 9.5 of Regulation 2065/2003 has occurred –

- (a) that food shall be treated for the purposes of Article 8 of the Order as failing to comply with the food safety requirements, and
- (b) if that food is part of a batch, lot or consignment of food of the same class or description, it shall be presumed, until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

(2) For the purposes of this regulation “food” includes any primary smoke condensate, primary tar fraction or derived smoke flavouring.

### **Offences and penalties**

5. Any person who contravenes or fails to comply with any of the specified Community provisions contained in the Schedule shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Application of various provisions of the Food Safety (Northern Ireland) Order 1991**

6. The following provisions of the Order shall apply for the purposes of these Regulations and Regulation 2065/2003 as they apply for the purposes of the Order –

- (a) Article 4 (presumption that food is intended for human consumption);
- (b) Article 19 (offences due to the fault of another person);
- (c) Article 20 (defence of due diligence) as it applies for the purposes of Articles 13 or 14 of the Order;
- (d) Article 21 (defence of publication in the course of business);
- (e) Article 30(8) (which relates to documentary evidence);
- (f) Article 34(1) (obstruction, etc. of officers);
- (g) Article 34(2), with the modification that the reference to “any such requirement as is mentioned in paragraph 1(b)” shall be deemed to be a reference to any such requirement as is mentioned in Article 34(1)(b) as applied by sub-paragraph (f);
- (h) Article 36(1) (punishment of offences) insofar as it relates to offences under Article 34(1) as applied by sub-paragraph (f);
- (i) Article 36(2) and (3) insofar as it relates to offences under Article 34(2) as applied by sub-paragraph (g)

### **Enforcement**

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

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 9th March 2005.

(L.S.)

*Noel McCann*

A senior officer of the Department of Health, Social Services and Public Safety

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## SCHEDULE

Regulations 2 and 5

### SPECIFIED COMMUNITY PROVISIONS

<i>Provision of Regulation 2065/2003</i>	<i>Subject Matter</i>
Article 4.2	<p>Prohibition on marketing a smoke flavouring not on the list of authorised smoke flavourings, or any food in or on which such a smoke flavouring is present.</p> <p>Prohibition on marketing an authorised smoke flavouring, or any food in or on which a smoke flavouring is present, otherwise than in accordance with any conditions of use laid down in the authorisation.</p>
Article 5.1	<p>Prohibition on using treated wood, unless it can be demonstrated by appropriate certification or documentation that the substance used in treatment does not give rise to potentially toxic substances during combustion.</p> <p>Requirement to be able to demonstrate by documentation or certification that the prohibition described above has been observed.</p>
Article 5.2	<p>Requirement to observe conditions in Annex I during production of primary products.</p> <p>Prohibition on the use of water-insoluble oily phase during production of smoke flavourings.</p>
Article 9.4	<p>Requirement that an authorisation holder or any other food business operator using an authorised product, or a derived smoke flavouring produced from an authorised product, shall comply with any conditions or restrictions attached to the authorisation.</p>
Article 9.5	<p>Requirement that an authorisation holder inform the Commission of any new scientific or technical information relating to an authorised product, which might influence the assessment of the safety of that authorised product.</p>
Article 13.1	<p>Requirement that food business operators ensure that the information specified is transmitted to the receiving food business operator when the product is first placed on the market.</p>
Article 13.2	<p>Requirement that following first placing on the market, on each occasion that the product is placed on the market, food business operators placing the products on the market transmit the information specified in Article 13.1 to the receiving food business operators.</p>
Article 13.3	<p>Requirement that food business operators have systems and procedures in place to identify from whom they received and to whom they passed on the product.</p>

## EXPLANATORY NOTE

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

These Regulations provide for the enforcement and execution of certain specified provisions of Regulation (EC) No. 2065/2003 of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods (O.J. No. L309, 26.11.2003, p. 1).

In particular these Regulations –

- (a) formally designate the Food Standards Agency as the national competent authority to receive applications for the authorisation of new primary smoke condensates and primary tar fractions for use as such in or on foods, or in the production of derived smoke flavourings for use in or on foods (regulation 3);
- (b) apply various provisions of the Food Safety (Northern Ireland) Order 1991 with some modifications in their application for the purposes of these Regulations (regulations 4 and 6);
- (c) establish penalties for failing to comply with certain specified provisions of Regulation (EC) No. 2065/2003 (regulation 5 and the Schedule);
- (d) provide for district councils to enforce the provisions of these Regulations and Regulation (EC) No. 2065/2003 (regulation 7).

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