

2017 No. 157

FOOD

**The Materials and Articles in Contact with Food (Amendment)
Regulations (Northern Ireland) 2017**

Made - - - - - *9th August 2017*

Coming into operation - *14th September 2017*

The Department of Health(a), in exercise of the powers conferred by Articles 15(2), 16(1) and (2) and 47(2) of the Food Safety (Northern Ireland) Order 1991(b) makes the following Regulations.

In accordance with Article 47(3A) of the Food Safety (Northern Ireland) Order 1991, the Department of Health has had regard to relevant advice given by the Food Standards Agency.

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), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Materials and Articles in Contact with Food (Amendment) Regulations (Northern Ireland) 2017 and come into operation on 14th September 2017.

Amendment of the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012

2. The Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012(d) are amended in accordance with regulations 3 to 14.

3. In regulation 2 (interpretation) for the definition of “Regulation 10/2011” substitute —

““Regulation 10/2011” means Commission Regulation (EC) No. 10/2011 on plastic materials and articles intended to come into contact with foods as last amended by Commission Regulation (EU) No. 2017/752;”(e);

(a) Formerly the Department of Health, Social Services and Public Safety; see 2016 c.5 (N.I.), section 1
(b) S.I. 1991/762 (N.I.7) as amended by S.I. 1996/1663 (N.I. 12), paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c.28 and S.R. 2004 Nos 482 and 505
(c) OJ No. L 31, 1.2.2002, p.1 as last amended by Regulation (EU) No. 652/2014 of the European Parliament and of the Council of 15th May 2014 (OJ No. L 189, 27.6.2014, p.1)
(d) S.R. 2012 No.384
(e) OJ No L 12 15.1.2011 p.1 as last amended by Commission Regulation (EU) 2017/752 (OJ No. L113, 29.4.2017, p.18)

4. In regulation 7 (offences of contravening specified provisions of Regulation 450/2009), omit paragraph (2).

5. In regulation 12(8) (controls and limits), for “paragraphs (5), (6) or (7)” substitute “paragraphs (5) or (7)”.

6. In regulation 14 (offences of contravening specified provisions of Regulation 10/2011)—

(a) in paragraph 1 for “the Schedule” substitute “Schedule 1”; and

(b) omit paragraph (2).

7. For regulation 15 (competent authorities for the purposes of Regulation 10/2011), substitute—

“15.—(1) The competent authorities for the purposes of Articles 8 and 16(1) of Regulation 10/2011 are the Food Standards Agency and each district council in its district.”

8. In regulation 16 (restrictions on the use of certain epoxy derivatives (BADGE, BFDGE and NOGE)) —

(a) in paragraph (1)(b) for “paragraphs (2) and (3) are” substitute “paragraph 2 is”;

(b) omit paragraph (3); and

(c) in paragraph (4), for “paragraph (2) or (3)” substitute “paragraph (2)”.

9. For regulation 19 (offences and penalties) substitute —

“19.—(1) Any person who contravenes regulation 10(3), 12(8) or 18(2) is guilty of an offence.

(2) Any person who intentionally obstructs a person acting in the execution of Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009, Regulation 10/2011, or these Regulations is guilty of an offence.

(3) Any person who, without reasonable excuse, fails to provide any assistance or information a person may reasonably require for the performance of their functions under the Regulations mentioned in paragraph (2) is guilty of an offence.

(4) Any person who, in purported compliance with any requirement under paragraph (3), knowingly or recklessly supplies information that is false or misleading in any material particular is guilty of an offence.

(5) A person guilty of an offence is liable —

(a) in the case of an offence created by paragraph (1) or (4) or by regulation 4(3), 5, 7(1), 14(1), or 16(4)—

(i) on conviction on indictment to a fine or to a term of imprisonment not exceeding two years or both, or

(ii) on summary conviction to a fine not exceeding level 5 on the standard scale; and

(b) in the case of an offence created by paragraph (2) or (3), on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Nothing in paragraph (2) or (3) is to be construed as requiring a person to answer any question or give any information if to do so might incriminate that person.”

10. For regulation 20 (enforcement), substitute—

“20.—(1) Each district council in its district must execute and enforce Regulation 1935/2004, Regulation 1895/2005, Article 4 of Regulation 2023/2006, Regulation 450/2009, Regulation 10/2011 and 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;

(b) Article 13 of Regulation 450/2009; and

(c) Article 16(1) of Regulation 10/2011.”.

11. In regulation 22(2) (time limit for prosecutions), for “7(2), 14(2) or 19(2) or (3)” substitute “19(2) or (3)”.

12. For regulation 26 (application of various provisions of the Order) substitute—

“**26.**—(1) Article 9(1) and (2) of the Order (improvement notices) applies for the purposes of these Regulations with the modification (in the case of Article 9(1)) set out in Schedule 2 Part 1 for the purposes of-

(a) enabling an improvement notice to be served on a person requiring that person to comply with any of the following provisions—

(i) regulations 10(4), 10(6), 12(6);

(ii) Article 16 of Regulation 1935/2004;

(iii) Article 5 of Regulation 1895/2005;

(iv) Articles 12 and 13 of Regulation 450/2009; and

(v) the second sentence of Article 8, Article 15 as read with Annex IV and Article 16 of Regulation 10/2011; and

(b) making the failure to comply with a notice referred to in sub-paragraph (a) an offence.

(2)The provisions of the Order specified in column 1 of the table in Part 2 to Schedule 2 apply, with the modifications (if any) specified in column 2 of that table.

(3)Paragraphs (1) and (2) are without prejudice to the application of the Order to these Regulations for purposes other than those specified in paragraph (1).”

13. In the Schedule (specified provisions of Regulation 10/2011) —

(a) rename the Schedule, “Schedule 1”;

(b) for the text in the first column of the seventh row (which relates to Article 11) of the table, substitute “Article 11(1) and Annex I, as read with Article 11(3) and (4)”;

(c) omit the entries in the final row of the table.

14. After the Schedule insert the Schedule to these regulations.

Sealed with the official seal of the Department of Health on 9th August 2017.



Elizabeth Redmond
A senior officer of the Department of Health

SCHEDULE

Regulation 14

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

“SCHEDULE 2

Regulation 26

Application of provisions of the Order

PART 1

Modification of Article 9(1)

1. For Article 9(1) (improvement notices) substitute—

“(1) If an authorised officer has reasonable grounds for believing that a person is failing to comply with a provision specified in sub-paragraph 1A, the authorised officer may, by a notice served on that person (in this Order referred to as an “improvement notice”) —

- (a) state the officer’s grounds for believing that the person is failing to comply with the relevant provision;
- (b) specify the matters which constitute the person’s failure so to comply;
- (c) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or measures that are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.

(1A) The provisions are—

- (a) regulations 10(4), 10(6) or 12(6) of the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012;
- (b) Article 16 of Regulation 1935/2004 of the European Parliament and of the Council on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC;
- (c) Article 5 of Commission Regulation (EC) No. 1895/2005 on the restriction of use of certain epoxy derivatives in materials and articles intended to come into contact with food;
- (d) Article 12 and 13 of Commission Regulation (EC) No. 450/2009 on active and intelligent materials and articles intended to come into contact with food; and
- (e) the second sentence of Article 8, Article 15 as read with Annex IV and Article 16 of Commission Regulation (EU) No. 10/2011 on plastic materials and articles intended to come into contact with food.”

PART 2

Application and modification of other provisions of the Order

<i>Column 1</i> <i>Provision of the Order</i>	<i>Column 2</i> <i>Modification</i>
Article 2 (4) (extended meaning of “sale” etc.)	For “this Order” substitute “the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012”.
Article 4 (presumptions that food intended for human consumption)	Any reference to the Order must be construed as including a reference to the these Regulations, Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009, Regulation 10/2011 and the references to “sold” and “sale” are deemed to include references to “placed on the market” and “placing on the market”.
Article 19 (offences due to fault of another person)	For “any of the preceding provisions of this Part” substitute “Article 9(2) as applied by regulation 26(1) and Part 1 to Schedule 2 of the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012”.
Article 20 (defence of due diligence)	In paragraph (1) for “any of the preceding provisions of this Part” substitute “Article 9(2), as applied by regulation 26(1) of the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012”.
Article 30(8) (which relates to documentary evidence)	Any reference to the Order or part thereof, must be construed as including a reference to these Regulations.
Article 33 (powers of entry)	In Article 33(1) for the purpose of these Regulations the references to the Order or Part thereof must be construed as including a reference to Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009 or Regulation 10/2011.
Article 34 (obstruction etc. of officers)	In each place occurring in paragraph (1), for “this Order” insert “Article 9(1) of this Order as applied by regulation 26(1) of the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012”.
Article 36(1) and (2) (punishment of offences)	In paragraph (1), after “Article 34(1)”, insert- “, as applied and modified by regulation 26(1) and Part 2 to Schedule 2 of the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012”. After paragraph (1), insert— “(1A) A person guilty of an offence under Article 9(2), as applied by regulation 26(1) of the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2016

shall be liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.”.

In paragraph (2)—

(a) for “any other offence under this Order”, substitute “an offence under Article 34(2), as applied by regulation 26(1) and Part 2 to Schedule 2 of the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012”; and

(b) in subparagraph (b), for “the relevant amount”, substitute “the statutory maximum”.

Article 37 (appeals)

For paragraph (1) substitute—

“(1) Any person who is aggrieved by a decision of an authorised officer to serve an improvement notice under Article 9(1) as applied and modified by regulation 26 and Schedule 2 of the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012 may appeal to a court of summary jurisdiction.”

Article 38 (appeals against improvement notices)

In both paragraphs (1) and (2) insert “as applied and modified by regulation 26 and Schedule 2 of the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012” after “improvement notice”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Materials and Articles in Contact with Food Regulations (Northern Ireland) 2012 (“the principal Regulation”) to provide for the continued enforcement of Commission Regulation (EU) No. 10/2011 on plastic materials and articles intended to come into contact with food) as amended by Commission Regulation (EU) No. 2016/1416.

Those amendments include—

- (a) removal of offences in Regulations 7(2), 14(2), 16(4), 19(1) and 19(3) of the principal Regulations (regulation 4, 6, 8(b) and 9);
- (b) amendment of regulation 26 (application of various provisions of the Order) and insertion of a Schedule to the principal Regulations to apply Article 9(1) of the Food Safety (Northern Ireland) Order 1991, enabling improvement notices to be served to require compliance with provisions of the principal Regulations and provisions of EU Regulations specified in regulation 26(1). The provisions, as applied, make the failure to comply with an improvement notice an offence under Article 9(2) of the Food Safety (Northern Ireland) Order 1991 (regulation 12 and 14);
- (c) amendments to remove the requirement to provide a written declaration from regulation 12(8) (regulation 5) and regulation 16(3) of the principal Regulations (regulation 8);
- (d) minor amendments to clarify the competent authorities (regulation 7) and enforcement authorities (regulation 10);
- (e) minor amendments to regulation 22(2) to reflect the removal of criminal offences (regulation 11);
- (f) amendments to the Schedule to the principal Regulations to insert provisions of Regulation 10/2011 and amend the numbering (regulation 13).

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