1981 No. 285

FOOD AND DRUGS

Materials and Articles in Contact with Food Regulations (Northern Ireland) 1981

Made . . . . . *20th August 1981*

Coming into operation . . . *28th September 1981*

The Department of Health and Social Services, being a designated Department(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to materials and articles in contact with food or drink or intended for such contact, in exercise of the powers conferred on it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following regulations:—

Citation and commencement

1. These regulations may be cited as the Materials and Articles in Contact with Food Regulations (Northern Ireland) 1981 and shall come into operation on 28th September 1981.

Interpretation

2.—(1) In these regulations—

"authorised officer" means an authorised officer of a district council;

"business" includes the undertaking of a canteen, club, school, hospital or institution, whether carried on for profit or not, and any undertaking or activity carried on by a district council or other public authority;

"Department" means the Department of Health and Social Services;

"food" means food intended for human consumption and includes drink, water, natural mineral water, chewing gum and other products of a like nature and use, and articles and substances used as ingredients in the preparation of food, but does not include—

(*a*) live animals or birds,

(*b*) fodder or feedingstuffs for animals, birds or fish, or

(*c*) articles or substances used only as drugs;

"import" means import in the course of a business;

"preparation" in relation to food, includes manufacture and any form of treatment or process;

"public analyst" has the meaning assigned to it by section 31 of the Food and Drugs Act (Northern Ireland) 1958(**c**);

"registered trade mark" means a trade mark which has effect in any member state of the European Economic Community and is duly registered in accordance with the laws of that state;

"sell" includes offer or expose for sale or have in possession for sale;

(**a**) Designated by S.I. 1976/2141
(**b**) 1972 c. 68
(**c**) 1958 c. 27 (N.I.)

"sell by retail" means sell to a person buying otherwise than for the purposes of re-sale, but does not include selling to a caterer for the purposes of his catering business or to a manufacturer for the purposes of his manufacturing business;

"ship" includes any boat or craft, and for this purpose "craft" includes hovercraft.

(2) The Interpretation Act (Northern Ireland) 1954(a) shall apply to these regulations as it applies to a Measure of the Northern Ireland Assembly.

Exemptions

3. The provisions of these regulations shall not apply to—

(*a*) any fixed public or private water supply equipment;

(*b*) any substance which, being used as a covering or coating for a food, forms part of that food and may be consumed with it, including such a substance used as covering or coating for cheese rind or prepared meat products;

(*c*) any material or article intended for exportation to any place outside the United Kingdom;

(*d*) any material or article which is a collector's piece of artistic, archaeological or ethnographic interest or to any other material or article of an age exceeding 100 years.

Sale and use of materials and articles

4.—(1) This regulation shall apply to materials and articles which are in their finished state and are intended to come into contact with food or which are in contact with food and are intended for that purpose.

(2) Materials and articles to which this regulation applies shall be manufactured in accordance with good manufacturing practice, that is to say in such a way that under normal or foreseeable conditions of use they do not transfer their constituents to food with which they are, or are likely to be, in contact, in quantities which could—

(i) endanger human health or

(ii) bring about a deterioration in the organoleptic characteristics of such food or an unacceptable change in its nature, substance or quality.

(3) A person shall not—

(*a*) sell,

(*b*) import, or

(*c*) use in the course of a business in connection with the storage, preparation, packaging, selling or serving of food,

any such material or article which does not comply with this regulation.

Labelling and description of materials and articles sold by retail

5.—(1) The following particulars shall be shown with any material or article which, being in its finished state, is intended to come into contact with food but is not already in contact with food, when such material or article is sold by retail:—

(*a*) unless the material or article is by its nature clearly intended to come into contact with food, the description "for food use" or a specific indication of the particular use for which the material or article is intended,

(*b*) any special conditions to be observed when the material or article is being used, and

(*c*) either

(a) 1954 c. 33 (N.I.)

(i) the name or trade name and address or registered office, or

(ii) the registered trademark

of the manufacturer or processor of the material or article, or of a seller thereof established within the European Economic Community.

(2) Such particulars shall be shown clearly, legibly and indelibly—

(*a*) on the material or article or on its packaging, or

(*b*) on a label affixed to the material or article or to its packaging, or

(*c*) on a sign which is in the immediate vicinity of the material or article and is clearly visible to purchasers, but the particulars mentioned in paragraph (1)(*c*) shall appear on such a sign only if it was not reasonably practicable for such particulars, or a label bearing them, to be marked on, or affixed to, the material or article or to its packaging at the time of manufacture or sale.

(3) A person shall not sell by retail any such material or article, unless the particulars mentioned in paragraph (1) are shown in the manner required by paragraph (2).

Labelling and description of materials and articles sold otherwise than by retail

6.—(1) The following particulars shall be shown with any material or article which, being in its finished state, is intended to come into contact with food but is not already in contact with food, when such material or article is sold otherwise than by retail or is imported:—

(*a*) the description "for food use" or a specific indication of the particular use for which the material or article is intended,

(*b*) any special conditions to be observed when the material or article is being used, and

(*c*) either

(i) the name or trade name and address or registered office, or

(ii) the registered trade mark

of the manufacturer or processor of the material or article, or of a seller thereof established within the European Economic Community.

(2) Such particulars shall be shown clearly, legibly and indelibly—

(*a*) on the material or article or on its packaging, or

(*b*) on a label affixed to the material or article or to its packaging, or

(*c*) in the accompanying documents.

(3) A person shall not sell otherwise than by retail or import any such material or article, unless the particulars mentioned in paragraph (1) are shown in the manner required by paragraph (2).

Restriction on use of description "for food use"

7.—(1) A person shall not sell any material or article under the description "for food use" or under any other description directly or indirectly leading a purchaser to believe that he is purchasing a material or article suitable for use with food, unless that material or article complies with the provisions of regulation 4(2).

(2) A person shall not publish, or be a party to the publication of, an advertisement for a material or article in which a description of the kind mentioned in paragraph (1) is used, unless the material or article to which the advertisement relates complies with the provisions of regulation 4(2).

(3) In any proceedings brought under paragraph (2) against the manufacturer, producer or importer of any material or article or of any food, it shall rest on the person charged to prove that he did not publish and was not party to the publication of, the advertisement.

(4) In any proceedings brought under paragraph (2) it shall be a defence for the person charged to prove that, being a person whose business it is to publish, or arrange for the publication of, advertisements, he received the advertisement for publication in the ordinary course of business and did not know and had no reason to suspect that its publication would amount to an offence under this regulation.

(5) Where a person sells a material or article to a purchaser in response to a request in which a description of the kind mentioned in paragraph (1) is used, he shall be deemed to have sold that material or article under that description, unless he clearly notifies the purchaser at the time of sale that the material or article is not suitable for use with food.

Materials and articles offered as prizes, etc.

8.—(1) Regulations 4, 5 and 7 shall apply to—

(*a*) any material or article which is offered as a prize or reward in connection with any entertainment to which the public are admitted, whether on payment of money or not, as if the material or article were, or had been, exposed for sale by each person concerned in the organisation of the entertainment;

(*b*) any material or article which is offered as a prize or reward or given away for the purpose of advertisement, or in furtherance of any trade or business, as if the material or article were, or had been, exposed for sale by the person offering or giving away the material or article; and

(*c*) any material or article which is exposed or deposited in any premises for the purpose of being so offered or given away as aforesaid, as if the material or article were, or had been, exposed for sale by the occupier of the premises.

(2) The expression "entertainment" includes any social gathering, amusement, exhibition, performance, game, sport or trial of skill.

Enforcement

9. Each district council shall enforce and execute the provisions of these regulations in its district.

Powers of authorised officers

10. An authorised officer may at all reasonable hours and on producing, if so required, some duly authenticated document showing his authority, exercise the following powers, that is to say—

(*a*) he may, for the purpose of ascertaining whether any offence under these regulations has been committed, inspect any materials or articles and enter—

(i) any premises, other than premises used only as a dwelling, or

(ii) any ship, aircraft or vehicle;

(*b*) if he has reasonable cause to suspect that an offence under these regulations has been committed, he may require any person carrying on a trade or business, or employed in connection with a trade or business, to produce any books or documents relating to the trade or business, and he may take copies of any such book or document, or of any entry in any such book or document;

(*c*) he may for the purpose of ascertaining whether any offence under these regulations has been committed, purchase or take samples of any material or article to which these regulations apply and of any food which has come into contact with any such material or article.

Confidentiality

11. No information obtained from any books or documents produced in accordance with regulation 10(*b*) shall, without the previous consent in writing of the person carrying on the trade or business in question, be disclosed except for the purpose of any proceedings for an offence against any of these regulations or any report of those proceedings.

Analysis, examination and testing

12.—(1) If an authorised officer who has procured a sample of any material or article to which these regulations apply or of any food which has come into contact with any such material or article considers that it should be analysed, examined or tested, he shall submit such sample to be analysed, examined or tested, as the case may be, by the public analyst for the district in which it was procured.

(2) The public analyst shall analyse, examine or test as soon as practicable any sample submitted to him in pursuance of this regulation.

(3) If—

(*a*) the office of a public analyst for a district is vacant, or

(*b*) the public analyst determines that he is for any reason unable to perform an effective analysis, examination or test,

the sample shall be submitted or, as the case may be, sent by the public analyst, to such person as the Department may approve, and that person, if he consents to analyse, examine or test the sample, shall do so upon payment to him of such sum as may be agreed upon.

(4) A public analyst who has analysed, examined or tested a sample shall give to the person by whom it was originally submitted a certificate specifying the result of the analysis, examination or test.

(5) Any certificate of the results of an analysis, examination or test given by a public analyst in pursuance of this regulation shall be signed by the public analyst, but the analysis, examination or test may be made by any person acting under the direction of the analyst.

(6) In any proceedings under these regulations the production by one of the parties of a document purporting to be a certificate under paragraph (4) or of a document supplied to him by the other party as being a copy of such a certificate, shall be sufficient evidence of the facts stated therein, unless, in the first mentioned case, the other party requires that the analyst shall be called as a witness.

(7) In any such proceedings if a person charged intends to produce a certificate of a public analyst, or under paragraph (6) to require that the analyst shall be called as a witness, notice of his intention, together, in the first mentioned case, with a copy of the certificate, shall be given to the other party at least three clear days before the hearing or trial, and, if this requirement is not complied with, the court may, if it thinks fit, adjourn the hearing or trial on such terms as it thinks proper.

(8) In paragraphs (4) to (7), references to a public analyst include—

(*a*) references to a person approved by the Department under paragraph (3), and

(*b*) references to a public analyst within the meaning of the Food and Drugs Act 1955(**a**), and the Food and Drugs (Scotland) Act, 1956(**b**).

Power of court to require analysis, examination or testing by Government Chemist

13.—(1) The court before which any proceedings are taken under these regulations, may, if it thinks fit for the purposes of the proceedings, cause

(*a*) any material or article which is the subject of the proceedings and, if it has already been analysed, examined or tested, is capable of being further analysed, examined or tested, or

(*b*) any food which has been in contact with any such material or article,

to be sent to the Government Chemist, who shall make such analysis, examination or test as is appropriate and transmit to the court a certificate of the result thereof, and the costs of the analysis, examination or test shall be paid by the prosecutor or the person charged as the court may order.

(**a**) 1955 (4 & 5 Eliz. 2) c. 16 (**b**) 1956 (4 & 5 Eliz. 2) c. 30

(2) If, in a case where an appeal is brought, no action has been taken under paragraph (1), the provisions thereof shall apply also in relation to the court by which the appeal is heard.

(3) Any certificate of the results of an analysis, examination or test transmitted by the Government Chemist under this regulation shall be signed by or on behalf of the Government Chemist, but the analysis, examination or test may be made by any person under the direction of the person by whom the certificate is signed; and any certificate so transmitted by the Government Chemist shall be evidence of the facts stated therein unless any party to the proceedings requires that the person by whom it is signed shall be called as a witness.

Obstruction

14. A person shall not—

(*a*) wilfully obstruct an authorised officer acting in execution of these regulations; or

(*b*) without reasonable cause fail to give to any such authorised officer acting as aforesaid any assistance or information or to provide such facilities as the authorised officer may reasonably require of him for the purposes of his functions under these regulations.

Penalties

15. If any person contravenes any of the provisions of these regulations, he shall be guilty of an offence and liable on summary conviction in the case of regulation 14 to a fine not exceeding £200 and in any other case to a fine not exceeding £400.

Protection for authorised officers acting in good faith

16.—(1) An officer of a district council shall not be personally liable in respect of any act done by him in the execution or purported execution of these regulations and within the scope of his employment, if he did that act in the honest belief that his duty under these regulations required or entitled him to do it:

Provided that nothing in this paragraph shall be construed as relieving a district council from any liability in respect of acts of its officers.

(2) Where an action has been brought against an officer of a district council in respect of an act done by him in the execution or purported execution of these regulations and the circumstances are such that he is not legally entitled to require the district council to indemnify him, the district council may, nevertheless, indemnify him against the whole or a part of any damages and costs which he may have been ordered to pay or which he may have incurred, if it is satisfied that he honestly believed that the act complained of was within the scope of his employment and that his duty under these regulations required or entitled him to do it.

(3) For the purposes of this regulation, a public analyst appointed by a district council, whether or not he is employed full time, or a person approved by the Department under regulation 12(3), shall be treated as being an officer of the relevant district council.

Offences due to fault of other person

17. 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 may be charged with and convicted of the offence by virtue of this regulation whether or not proceedings are taken against the first-mentioned person.

Defence of due diligence

18.—(1) In any proceedings for an offence under these regulations it shall be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence.

(2) If in any case the defence provided by the last foregoing paragraph involves the allegation that the commission of the offence was due to the act or default of another person, the person charged shall not, without leave of the court, be entitled to rely on that defence unless, within seven days, or such longer period as the court may allow, of the service of the summons, he has served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

Conditions under which warranty may be pleaded as defence

19.—(1) In any proceedings for an offence under these regulations, being an offence consisting of selling, advertising for sale, importing or using any material or article, it shall be a defence for the person charged to prove—

(*a*) that he purchased it as being a material or article which could lawfully be sold, advertised for sale, imported or used and with a written warranty to that effect, and

(*b*) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise, and

(*c*) that it was then in the same state as when he purchased it.

(2) A warranty shall only be a defence in proceedings under these regulations if—

(*a*) the person charged—

(i) has, within seven days, or such longer period as the court may allow, of the service of the summons, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it, and

(ii) has also sent a like notice of his intention to that person, and

(*b*) in the case of a warranty given by a person resident outside the United Kingdom, the person charged proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein.

(3) Where the person charged is an employee of the person who purchased the material or article under a warranty, he shall be entitled to rely on the provisions of this regulation in the same way as his employer would have been entitled to do if he had been the person charged.

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing or trial and to give evidence, and the court may, if it thinks fit, adjourn the hearing or trial to enable him to do so.

(5) For the purposes of this regulation, a description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that description by any person without contravening any of the provisions of these regulations.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 20th August 1981.

(L.S.) *S. W. McDowell*
Assistant Secretary

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These regulations come into operation on 28th September 1981. The regulations implement Council Directive No. 76/893/EEC, on the approximation of the laws of the Member States relating to materials and articles intended to come into contact with foodstuffs (O.J. No. L 340, 9.12.76, p. 19).

Under the regulations, materials and articles which are in their finished state and are intended to come into contact with food or which are in contact with food and are intended for that purpose, must be manufactured in accordance with good manufacturing practice, that is to say they must not transfer their constituents to food in quantities which could endanger human health or bring about a deterioration in the organoleptic characteristics of food or an unacceptable change in its nature, substance or quality (regulation 4).

The regulations require materials and articles which, being in their finished state, are intended to come into contact with food but are not already in contact with food to be described as suitable for use with food and for other specified particulars to be provided; they also prescribe the manner of marking at all stages of marketing (regulations 5 and 6).

The regulations also—

(*a*) restrict the use of the expression "for food use" to materials and articles which comply with the regulations (regulation 7);

(*b*) designate enforcement authorities and prescribe their powers (regulations 9, 10 and 11);

(*c*) provide for the analysis, examination and testing of materials and articles and of food with which they have come into contact (regulation 12);

(*d*) specify the power of a court to require analysis, etc., by the Government Chemist (regulation 13);

(*e*) make provision for offences, penalties, defences, etc. (regulations 14-19).