

2016 No. 251

FOOD

The Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016

Made - - - - *27th June 2016*

Coming into operation - *20th July 2016*

The Department of Health^(a) makes the following Regulations in exercise of the powers conferred by Articles 15(1), 16(1) and (2), 25(3), 26(3) and 47(2) of the Food Safety (Northern Ireland) Order 1991^(b) and paragraph 1A of Schedule 2 to the European Communities Act 1972 ^(c).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Department of Health, that it is expedient for a reference to the provisions of Regulation (EU) No 609/2013 of the European Parliament and of the Council on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009^(d) specified in Regulation 2(2), to be construed as a reference to those provisions as amended from time to time.

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 (EU) No 178/2002^(e) 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 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 Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016 and come into operation on 20th July 2016.

(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) 1972 c.68. as amended by the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008(c.7). Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51) and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (2008 c.7)
(d) OJ No. L 181, 29.6.2013 p.35
(e) OJ No. L31, 1.2.2002, p1 last amended by Commission Regulation (EC) No 596/2009 (OJ No L 188, 18.7.2009, p 14)

Interpretation

2.—(1) In these Regulations—

“the EU Regulation” means Regulation (EU) No 609/2013 of the European Parliament and of the Council, on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009;

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

“specified EU requirement” means any provision of the EU Regulation specified in column 1 of Schedule 1.

(2) Any reference to Article 2(2) or to a specified EU requirement is a reference to that provision as amended from time to time.

(3) The Interpretation Act (Northern Ireland) 1954(a) applies to these Regulations as it applies to an Act of the Assembly

Enforcement

3. It is the duty of each district council within its district to enforce these Regulations.

Offence and penalty

4. A person who fails to comply with Article 9(2) of the EU Regulation (substances in dangerous quantities) as read with Articles 1(1) and 4(1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Application of provisions of the Order

5.—(1) Articles 9(1) and (2) of the Order (improvement notices) apply, with the modification (in the case of Article 9(1)) specified in Part 1 of Schedule 2, for the purposes of enabling an improvement notice to be served on a person requiring that person to comply with a specified EU requirement and making the failure to comply with an improvement notice an offence.

(2) Article 33 of the Order (powers of entry) applies, with the modifications (in the case of Article 33(1)) specified in Part 1 of Schedule 2, for the purposes of enabling an authorised officer—

- (a) to exercise a power of entry to ascertain whether there is, or has been, any contravention of a specified EU requirement;
- (b) to exercise a power of entry to ascertain whether there is any evidence of any contravention of a specified EU requirement; and
- (c) when exercising a power of entry under the provisions of Article 33 as applied by this paragraph, to exercise the powers in paragraphs (6) and (7) relating to records.

(3) Article 37 (appeals) and Article 38 (appeals against improvement notices) of the Order apply, with the modifications specified in Part 1 of Schedule 2, for the purpose of enabling a decision to serve a notice referred to in paragraph (1) to be appealed.

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

(5) Paragraphs (1) to (4) are without prejudice to the application of the Order to these Regulations for purposes other than those specified in those paragraphs.

(a) 1954 c.33(NI)

(6) In this regulation “authorised officer” has the same meaning as in Article 2(2)(a) of the Order.

Amendments to Statutory Rules

6. Schedule 3 has effect.

Revocation

7. The following Regulations are revoked—

- (a) the Notification of Marketing of Food for Particular Nutritional Uses Regulations (Northern Ireland) 2007(a);
- (b) Regulations 26 and 27 of the Infant Formula and Follow on Formula Regulations (Northern Ireland) 2007(b); and
- (c) The Food for Particular Nutritional Uses (Miscellaneous Amendments) Regulations (Northern Ireland) 2010(c).

Sealed with the official seal of the Department of Health on 27th June 2016.



Julie Thompson
A senior officer of the Department of Health

SCHEDULE 1

Regulation 2(1)

Specified EU requirements

<i>Column 1</i> <i>Specified EU Requirement</i>	<i>Column 2</i> <i>Provisions to be read with the specified EU Requirements</i>
Article 4(2) (requirement for relevant food to be pre-packed)	Articles 1(1) and 4(1)
Article 9(1) (requirement for the composition of food to be nutritionally appropriate and suitable)	Articles 1(1), 4(1) and 9(3) and (4)
Article 9(2) (prohibition on substances in dangerous quantities)	Articles 1(1) and 4(1)
Article 9(5) (requirements as to labelling, presentation and advertising of relevant food)	Articles 1(1), 4(1) and 9(6)
Article 10 (additional requirements for infant formula and follow-on formula)	Article 4(1)

(a) S.R. 2007 No.60
(b) S.R. 2007 No.506
(c) S.R. 2010 No.33

Application and modification of provisions of the Order

PART 1

Modification of Articles 9(1), 33(1), 37 and 38

1. For Article 9(1) of the Order (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 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 to so 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 as may be specified in the notice.

(1A) Article 4(1) as read with Article 1(1) of Regulation (EU) No 609/2013 of the European Parliament and of the Council, on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 or a provision of that Regulation specified in Schedule 1 to the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016”.

2. In Article 33(1) (powers of entry) for subparagraphs (a) to (c) substitute—

“(a) to enter any premises within the council’s district for the purpose of ascertaining whether there is or has been on the premises any contravention of a provision of Regulation (EU) No 609/2013 of the European Parliament and the Council on food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 specified in Schedule 1 to the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016; and

(b) to enter any business premises, whether within or outside of the council’s district, for the purpose of ascertaining whether there is on the premises any evidence of any contravention within that district of any of those provisions.”

3. For Article 37(1) (appeals) 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 5(1) of, and Part 1 of Schedule 2 to, the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016, may appeal to a court of summary jurisdiction”.

4. In Article 37(2A)(b) for “(1)(a)” substitute “(1) as applied and modified by regulation 5(1) of and Part 1 of Schedule 2 to, the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016,”.

5. In both Article 38(1) and (2) (appeals against improvement notices), after “improvement notice” insert “under Article 9(1) as applied and modified by regulation 5(1) of, and Part 1 of

Schedule 2, to the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016”.

PART 2

Application and modification of other provisions of the Order

<i>Provision of the Order</i>	<i>Modifications</i>
Article 2(4) (extended meaning of “sale” etc.)	For “this Order” substitute “the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016”.
Article 3 (application to food offered as prizes etc.)	For “This Order” substitute “The Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016”.
Article 4 (presumptions that food intended for human consumption)	For “this Order” substitute “the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016”.
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 5(1) of the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016 or regulation 4 of those regulations”.
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 5(1) of the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016 or regulation 4 of those regulations.”. In paragraph (2) for “Article 13 and 14” substitute “regulation 4 of the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016”.
Article 21(defence of publication in the course of business)	For “any of the preceding provisions of this part” substitute “Article 9(2) as applied by regulation 5(1) of the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016 or regulation 4 of those regulations”.
Article 29 (procurement of samples)	In paragraph (b)(ii), after “under Article 33”, insert “as applied by regulation 5(2) and Part 1 of Schedule 2 to the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016”.
Article 30(8) (evidence of certificates given by a food analyst or examiner)	For “this Order” substitute “the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016”.
Article 34 (obstruction etc. of officers)	In paragraph (1), for “this Order” (in each place occurring) substitute “the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016”.
Article 36(1) and (2) (punishment of offences)	In paragraph (1), after “Article 34(1)”, insert “, as applied and modified by regulation 5(4) and Part 2 of Schedule 2 to the Food Safety (Information and Compositional Requirements)

Regulations (Northern Ireland) 2016,”.

After paragraph (1), insert—

“(1A) A person guilty of an offence under Article 9(2), as applied by regulation 5(1) of the Food Safety (Information and Compositional Requirements) 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 5(4) and Part 2 of Schedule 2 to the Food Safety (Information and Compositional Requirements) Regulations (Northern Ireland) 2016,”; and
 - (b) in subparagraph (b), for “the relevant amount”, substitute “the statutory maximum”.
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SCHEDULE 3

Regulation 6

Amendments to statutory rules

The Food Intended for Use in Energy Restricted Diets for Weight Reduction Regulations (Northern Ireland) 1997

1.—(1) The Food Intended for Use in Energy Restricted Diets for Weight Reduction Regulations (Northern Ireland) 1997(a) are amended in accordance with subparagraphs (2) to (7).

(2) For the definition of “relevant food” in regulation 1(2), substitute—

““relevant food” means specially formulated food intended for use in energy-restricted diets for weight reduction, being food which complies with the compositional requirements in Schedule 1 and which, when used as instructed by the manufacturer, replaces the whole of the total daily diet;”.

(3) For regulation 2(1) substitute—

“(1) A person shall not sell any relevant food under any name other than “total diet replacement for weight control” in the case of products intended as a replacement for the whole of the daily diet.”.

(4) In regulation 2(2) omit “or “meal replacement for weight control””.

(5) In regulation 3 for paragraphs (f) and (g) substitute—

“(f) for products mentioned in regulation 2(1), a statement that the product provides adequate amounts of all essential nutrients for the day and a statement that the product should not be used for more than three weeks without medical advice.”.

(6) For regulation 5 substitute—

“5. A person shall not sell any relevant food being a product mentioned in regulation 2(1) unless all individual components making up the product are contained in the same package.”.

(a) S.R. 1997 No.450, to which there are amendments not relevant to these Regulations

(7) Schedule 1 is amended in accordance with paragraphs (a) to (f)—

(a) for paragraph 1 (Energy) substitute—

“1. Energy

The energy provided by a product mentioned in regulation 2(1) shall not be less than 3360kJ (800 kcal) and shall not exceed 5040kJ (1200 kcal) for the total daily ratio”

(b) for paragraph 2.1 substitute—

“(2.1) The protein contained in products mentioned in regulation 2(1) shall provide not less than 25% and not more than 50% of the total energy of the product. In any case the amount of protein of products mentioned in regulation 2(1) shall not exceed 125g.”;

(c) in paragraph 3.2 omit “(a)” after “2(1)”;

(d) omit paragraph 3.3;

(e) in paragraph 4 omit “(a)” after “2(1)”;

(f) for paragraph 5 “(vitamins and minerals)” substitute—

“5. Vitamins and Minerals

The products mentioned in regulation 2(1) shall provide for the whole of the daily diet at least 100% of the amounts of vitamins and minerals specified in the Table.”

The Infant Formula and Follow-on Formula (Northern Ireland) Regulations 2007

2. In regulation 28 (offences and enforcement) of the Infant Formula and Follow-on Formula (Northern Ireland) Regulations 2007 for “24, 25, 26 or 27”, substitute “24 or 25”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision to enforce Regulation (EU) No 609/2013 of the European Parliament and of the Council, on the provisions of food intended for infants and young children, food for special medical purposes, and total diet replacement for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009.

These Regulations implement the framework of Regulation (EU) No 609/2013 of the European Parliament and of the Council, and introduce an improvement notice enforcement regime.

Regulation 3 provides for the enforcement of these Regulations by each district council within its district.

Regulation 4 creates an offence and penalty for breach of Article 9(2) of Regulation (EU) No 609/2013

Regulation 5 and Schedule 2 apply certain provisions of the Food Safety (Northern Ireland) Order 1991 (S.I. 1991 N.I.7) with modifications. This includes the application (with modifications) of Article 9(1), enabling an improvement notice to be served requiring compliance with a specified EU requirement. The provisions, as applied and modified, make the failure to comply with an improvement notice a criminal offence.

Regulation 6 and Schedule 3 amends statutory rules to take account of the repeal and replacement of relevant EU legislation

Regulation 7 revokes the Notification of Marketing of Food for Particular Nutritional Uses Regulations (Northern Ireland) 2007 (S.R. 2007 No. 60), the Food for Particular Nutritional Uses (Miscellaneous Amendments) Regulations (Northern Ireland) 2010 (S.R. 2010 No. 33), and regulations 26 and 27 of the Infant Formula and Follow on Formula Regulations (Northern Ireland) 2007 (S.R. 2007 No. 506).

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