

1992 No. 416

FOOD

The Flavourings in Food Regulations (Northern Ireland) 1992

Made 28th September 1992

Coming into operation 2nd November 1992

The Department of Health and Social Services for Northern Ireland, in exercise of the powers conferred on it by Articles 15(1)(a) and (e), 25(1) and (3), 26(3) and 47(2) of, and paragraph 1 of Schedule 1 to, the Food Safety (Northern Ireland) Order 1991(a) and, being a designated Department(b) for the purposes of section 2(2) of the European Communities Act(c) in relation to the presentation and packaging of food intended for sale for human consumption, in exercise (so far as is required for the amendment of Regulations made under the said section 2(2)) of the powers conferred on it by the said section 2(2) 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 (in so far as the Regulations are made in exercise of the powers conferred by the said Order), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Flavourings in Food Regulations (Northern Ireland) 1992 and shall come into operation on 2nd November 1992.

(2) In these Regulations—

- (a) “flavouring” means material used or intended for use in or on food to impart odour, taste or both;
- (b) “relevant flavouring” means flavouring which does not consist entirely of excepted material and the components of which include at least one of the following—
 - (i) a flavouring substance;
 - (ii) a flavouring preparation;
 - (iii) a process flavouring;
 - (iv) a smoke flavouring;

(a) S.I. 1991/762 (N.I. 7). See Article 2(2) for the definitions of “regulations” and “the Department concerned”

(b) Designated by S.I. 1981/833

(c) 1972 c. 68

- (c) “flavouring substance” means a chemical substance with flavouring properties the chemical structure of which has been established by methods normally used among scientists and which is—
- (i) obtained by physical, enzymatic or microbiological processes from appropriate material of vegetable or animal origin;
 - (ii) either obtained by chemical synthesis or isolated by chemical processes and which is chemically identical to a substance naturally present in appropriate material of vegetable or animal origin; or
 - (iii) obtained by chemical synthesis but not included under head (ii);
- (d) “flavouring preparation” means a product (other than a flavouring substance), whether concentrated or not, with flavouring properties which is obtained by physical processes or by enzymatic or microbiological processes from appropriate material of vegetable or animal origin;
- (e) “process flavouring” means a product which is obtained according to good manufacturing practices by heating to a temperature not exceeding 180°C for a continuous period not exceeding 15 minutes a mixture of ingredients (whether or not with flavouring properties) of which at least one contains nitrogen (amino) and another is a reducing sugar;
- (f) “smoke flavouring” means an extract from smoke of a type normally used in food smoking processes; and
- (g) “permitted flavouring” means a relevant flavouring which complies with the general purity criteria in Schedule 1.
- (3) For the purposes of paragraph (2)—
- (a) distillation and solvent extraction shall be regarded as included among types of physical process;
 - (b) material of vegetable or animal origin is appropriate material of vegetable or animal origin if it either is raw or has been subjected to a process normally used in preparing food for human consumption and to no process other than one normally so used; and
 - (c) drying, torrefaction and fermentation shall be treated as included among the types of process normally so used to which sub-paragraph (b) refers.
- (4) In these Regulations—
- “food” has the same meaning as in the Order, except that it is limited to food intended for sale for human consumption;
- “the Order” means the Food Safety (Northern Ireland) Order 1991;
- “sell” includes possess for sale, or offer or expose for sale, and in relation to relevant flavourings—
- (a) “consumer sale” means a sale of them—
 - (i) to the ultimate consumer, or
 - (ii) in a container in which they are ready for delivery to the ultimate consumer, and

(b) "business sale" means a sale of them other than a consumer sale; "specified substance" means a substance mentioned in column 1 of Schedule 2; and

"ultimate consumer" has the meaning which it has in the Food Labelling Regulations (Northern Ireland) 1984(a).

(5) For the purposes of these Regulations—

(a) any edible substance (including herbs and spices) or product, intended for human consumption as such, with or without reconstitution, and

(b) any substance which has exclusively a sweet, sour or salt taste, comprises excepted material.

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

Sale etc. of food containing flavourings

2.—(1) No food shall be sold which has in it or on it any added relevant flavouring other than a permitted flavouring.

(2) No food sold which has in it or on it any relevant flavouring shall contain by virtue of the presence of that relevant flavouring a proportion of 3, 4-benzopyrene greater than $x + 0.03 \mu\text{g}$ per kilogram of the food, where $x \mu\text{g}$ of 3, 4-benzopyrene per kilogram of the food is the proportion thereof otherwise occurring in the food, and for the purpose of this paragraph x is capable of representing nil as well as any other quantity.

(3) No food sold which has in it or on it any relevant flavouring shall have in it or on it any specified substance which has been added as such.

(4) No food sold which has in it or on it any relevant flavouring shall contain any specified substance other than a specified substance which is present in the food—

(a) naturally, or

(b) as a result of the inclusion of the relevant flavouring where that relevant flavouring is prepared from natural raw materials.

(5) No food sold which has in it or on it any relevant flavouring shall contain a proportion greater than the permitted proportion of any specified substance except where the proportion of the specified substance in the food is no greater than it would have been had the food not had the relevant flavouring in it or on it.

(6) For the purpose of paragraph (5) the permitted proportion of any specified substance mentioned in a paragraph of column 1 of Schedule 2 is—

(a) except in the case of any description of food mentioned in the corresponding paragraph of column 3, the standard permitted proportion specified in the corresponding paragraph of column 2, and

(a) S.R. 1984 No. 407; the relevant amending Regulations are S.R. 1990 No. 440 and S.R. 1991 No. 203

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

(b) in the case of any description of food mentioned in the corresponding paragraph of column 3, the proportion specified for it in that paragraph.

(7) No person shall sell any food which does not comply with this regulation.

Sale, advertisement and labelling of flavourings

3.—(1) No person shall sell or advertise for sale any relevant flavouring to any person for use as an ingredient in the preparation of food unless the relevant flavouring is a permitted flavouring.

(2) No person shall make a business sale of any relevant flavourings to any person for use as ingredients in the preparation of food unless the relevant flavourings are in a container and the requirements for business sales of relevant flavourings are observed in relation to that sale.

(3) No person shall after 31st December 1993 make a consumer sale of any relevant flavourings to any person unless the relevant flavourings are in a container and the requirements for consumer sales of relevant flavourings are observed in relation to that sale.

(4) Schedule 3 shall have effect for the purposes of establishing when the requirements relating to any sale to which this regulation applies are observed in relation to that sale.

Use of the word “natural” and similar expressions

4.—(1) The word “natural”, or any word having substantially the same meaning, shall not be used in a business sale of any relevant flavouring to describe that relevant flavouring unless—

- (a) it is used in compliance with the requirements of Schedule 3, or
- (b) that relevant flavouring is a permitted flavouring the flavouring components of which are exclusively comprised of flavouring substances which come within regulation 1(2)(c)(i), flavouring preparations or both.

(2) The word “natural”, or any word having substantially the same meaning, shall not be used in a business sale of any relevant flavouring to qualify any substance used in its preparation unless that relevant flavouring is a permitted flavouring the flavouring component of which has been isolated solely, or almost solely, from that substance by physical processes, enzymatic or microbiological processes or processes normally used in preparing food for human consumption.

(3) No person shall make a business sale of any relevant flavouring to any person for use as an ingredient in the preparation of food in contravention of the requirements of this regulation.

Condemnation of food

5. Where any food is certified by a public analyst as being food which it is an offence against regulation 2 or 3(1) to sell, that food may be treated for the purposes of Article 8 of the Order (under which food may be seized and destroyed on the order of a justice of the peace) as failing to comply with food safety requirements.

Penalties and enforcement

6.—(1) If any person contravenes any of the foregoing provisions of these Regulations he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £2,000.

(2) Each district council shall enforce and execute the provisions of these Regulations within its district.

Defence in relation to exports

7. In any proceedings for an offence under these Regulations it shall be a defence for the person charged to prove that the food in respect of which the offence is alleged to have been committed was intended for export and complied with the importing country's domestic legislation relevant to the alleged offence.

Application of various provisions of the Order

8. The following provisions of the Order shall apply for the purposes of these Regulations as they apply for the purposes of Article 7, 13 or 14 of the Order and, unless the context otherwise requires, any reference in them to the Order shall be construed for the purposes of these Regulations as a reference to these Regulations—

- (a) Articles 2(4) and 3 (extended meaning of "sale" etc.);
- (b) Article 4 (presumption that food is intended for human consumption);
- (c) Article 19 (offences due to fault of another person);
- (d) Article 20 (defence of due diligence);
- (e) Article 21 (defence of publication in the course of business);
- (f) Article 30(8) (which relates to documentary evidence).

Amendment of the Arsenic in Food Regulations (Northern Ireland) 1961

9. The Arsenic in Food Regulations (Northern Ireland) 1961(a) shall be amended by the insertion immediately after item 12 in the Schedule to those Regulations of the following—

In column 1	In column 2
<i>(description of food)</i>	<i>(proportions of arsenic expressed in terms of parts per million estimated by weight)</i>
"12.A. Flavourings	3.0"

Amendment of the Lead in Food Regulations (Northern Ireland) 1979

10. The Lead in Food Regulations (Northern Ireland) 1979(b) shall be amended by deleting item 4 (flavourings) from Part II of Schedule 1 to those Regulations and inserting immediately after item 40 in Part I of that Schedule the following—

(a) S.R. & O. (N.I.) 1961 No. 98, to which there are amendments not relevant to these Regulations
 (b) S.R. 1979 No. 407, to which there are amendments not relevant to these Regulations

In column 1 (description of food)	In column 2 (proportions of lead expressed in milligrams per kilogram)
"41. Flavourings	10·0".

Amendment of the Food Labelling Regulations (Northern Ireland) 1984

11. The Food Labelling Regulations (Northern Ireland) 1984 shall be amended

- (a) by the substitution, in the definition of "the additives regulations" in regulation 2(1), for "and the Miscellaneous Additives in Food Regulations (Northern Ireland) 1981(a)", of "the Miscellaneous Additives in Food Regulations (Northern Ireland) 1981 and the Flavourings in Food Regulations (Northern Ireland) 1992"; and
- (b) by the deletion of sub-paragraph (e) (flavourings) in paragraph (1) of regulation 19 (foods which need not bear a list of ingredients).

Sealed with the Official Seal of the Department of Health and Social Services on 28th September 1992.

(L.S.)

J. Scott

Assistant Secretary

General Purity Criteria applicable to Permitted Flavourings

1. No relevant flavouring shall have in it or on it any specified substance which has been added as such.
2. No relevant flavouring shall contain any element or substance in a toxicologically dangerous quantity.
3. No relevant flavouring shall contain—
 - (a) more than 3 milligrams per kilogram of arsenic;
 - (b) more than 10 milligrams per kilogram of lead;
 - (c) more than 1 milligram per kilogram of cadmium;
 - (d) more than 1 milligram per kilogram of mercury.

Specified Substances

Column 1	Column 2	Column 3
<i>Specified substance</i>	<i>Standard permitted proportion</i>	<i>Permitted proportion in the case of particular descriptions of food</i>
Agaric acid	20 mg/kg	(a) Alcoholic drinks: 100 mg/kg (b) Food (other than drinks) containing mushrooms: 100 mg/kg
Aloin	0.1 mg/kg	Alcoholic drinks: 50 mg/kg
Beta asarone	0.1 mg/kg	(a) Alcoholic drinks: 1 mg/kg (b) Seasonings used in snack foods: 1 mg/kg
Berberine	0.1 mg/kg	Alcoholic drinks: 10 mg/kg
Coumarin	2 mg/kg	(a) Chewing gum: 50 mg/kg (b) Alcoholic drinks: 10 mg/kg (c) Caramel confectionery: 10 mg/kg
Hydrocyanic acid	1 mg/kg	(a) Nougat, marzipan, nougat or marzipan substitute or a similar product: 50 mg/kg (b) Tinned stone fruit: 5 mg/kg (c) Alcoholic drinks: 1 mg/kg for each percentage of alcohol by volume therein
Hypericine	0.1 mg/kg	(a) Alcoholic drinks: 10 mg/kg (b) Confectionery: 1 mg/kg

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Pulegone	25 mg/kg	(a) Mint confectionery: 350 mg/kg (b) Mint or peppermint flavoured drinks: 250 mg/kg. (c) Other drinks: 100 mg/kg
Quassine	5 mg/kg	(a) Alcoholic drinks: 50 mg/kg (b) Confectionery in pastille form: 10 mg/kg
Safrole, isosafrole or any combination of safrole and isosafrole	1 mg/kg	(a) Food containing mace, nutmeg or both: 15 mg/kg (b) Alcoholic drinks containing more than 25% of alcohol by volume: 5 mg/kg (c) Other alcoholic drinks: 2 mg/kg
Santonin	0.1 mg/kg	Alcoholic drinks containing more than 25% of alcohol by volume: 1 mg/kg
Thuyone (alpha), thuyone (beta) or any combination of thuyone (alpha) and thuyone (beta)	0.5 mg/kg	(a) Bitters: 35 mg/kg (b) Food (other than drinks) containing preparations based on sage: 25 mg/kg (c) Alcoholic drinks containing more than 25% of alcohol by volume: 10 mg/kg (d) Other alcoholic drinks: 5 mg/kg

Requirements for Sales**PART I**

1. The requirements for a business sale of any relevant flavourings are observed in relation to that sale where—

- (a) the container in which these flavourings are held bears in correct form the information required by Part II, or
- (b) that container bears in correct form the information required by paragraph 1 of Part II and, in a conspicuous part thereof, the words “intended for the manufacture of foodstuffs and not for retail” and trade documents relating to the consignment which comprises or includes the relevant flavourings are supplied to the purchaser with or in advance of the consignment and contain the information required by paragraphs 2 and 3 of Part II.

2. The requirements for a consumer sale of any relevant flavourings are observed in relation to that sale where the container in which those flavourings are held bears—

- (a) in correct form, and subject to sub-paragraph (e), the information required by paragraph 1 of Part II;
- (b) insofar as regulation 21 of the Food Labelling Regulations (Northern Ireland) 1984 does not apply to the product, the indication of minimum durability of the product which would be required by that regulation if the product had been a food to which that regulation applied;
- (c) any special storage conditions or conditions of use;
- (d) instructions for use if omission thereof would prevent appropriate use of the flavouring; and
- (e) where relevant flavourings include substances or materials other than components specified in paragraph 2(a) of Part II, a list setting out in descending order of weight—
 - (i) in respect of the components so specified, the information required by paragraph 1(b) of Part II, and
 - (ii) in respect of each other substance or material its name or, where appropriate, its “E” number.

3. Material (whether information or words) is borne in correct form for the purposes of paragraphs 1 and 2 above where, subject to paragraph 4, it is—

- (a) easily visible,
- (b) clearly legible,
- (c) indelible, and
- (d) in any case where more than one means of expression may be used, expressed in terms (in relation to a business sale) or in a language (in relation to a consumer sale) capable of being easily understood by the purchaser.

4. Paragraph 3 shall not be taken—

- (a) to require expressions in terms (in relation to a business sale) or in a language (in relation to a consumer sale) capable of being easily understood by the purchaser where other measures have been taken to enable him easily to understand the particulars included pursuant to the requirements of this Schedule, or

(b) to prohibit any of those particulars from being included in more than one language,
on the container, or where applicable, trade documents.

PART II

1. The information required by this paragraph is—
 - (a) the name (or business name) and address of one of the following:
 - (i) the manufacturer of the relevant flavourings;
 - (ii) the packer of the relevant flavourings;
 - (iii) a seller of the relevant flavourings established in the European Economic Community;
 - (b) the word “flavouring” or more specific names or descriptions of the relevant flavourings;
 - (c) either the words “for foodstuffs” or a more specific reference to the food for which the relevant flavourings are intended.

2. The information required by this paragraph is a list, in descending order of weight, of components of the relevant flavourings—
 - (a) using, in the case of the following components, the following classifications—
 - (i) in the case of flavouring substances which come within regulation 1(2)(c)(i), “natural flavouring substances”;
 - (ii) in the case of flavouring substances which come within regulation 1(2)(c)(ii), “flavouring substances identical to natural substances”;
 - (iii) in the case of flavouring substances which come within regulation 1(2)(c)(iii), “artificial flavouring substances”;
 - (iv) in the case of flavouring preparations, “flavouring preparations”;
 - (v) in the case of process flavourings, “process flavourings”; and
 - (vi) in the case of smoke flavourings, “smoke flavourings”; and
 - (b) using in the case of each other substance or material (if any), its name or, where appropriate, its “E” number.

3. The information required by this paragraph is—
 - (a) the quantity of each description of material in or on the relevant flavourings the sale of any description of food containing which is, if that description of food contains more than a specified quantity or proportion of that description of material, prohibited by any provision of the Order or of Regulations made under it, or
 - (b) such information as is necessary to enable the purchaser to ascertain whether, and if so to what extent, he could use such relevant flavourings in food sold by him without contravening any such provision.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations come into operation on 2nd November 1992 (though the imposition of labelling requirements for consumer sales is deferred until 1st January 1994). They implement Articles 4, 9 and 9a (as read with Articles 1 and 2) of Council Directive 88/388/EEC (OJ No. L184, 15.7.88, p. 61) as amended by Commission Directive 91/71/EEC (OJ No. L42, 15.2.91, p. 25) on the approximation of the laws of member States relating to flavourings for use in foodstuffs and to source materials for their production.

The principal provisions of these Regulations—

- (a) define relevant flavourings (regulation 1);
- (b) prescribe purity criteria with which relevant flavourings must comply to be permitted flavourings (regulation 1 and Schedule 1);
- (c) prohibit the sale of food having in it or on it any added relevant flavourings except permitted flavourings (regulation 2);
- (d) prohibit the sale of food containing relevant flavourings resulting in certain substances in the food exceeding specified limits (regulation 2 and Schedule 2);
- (e) prohibit the sale and the advertisement for sale, for use as an ingredient in the preparation of food, of any relevant flavouring other than a permitted flavouring (regulation 3(1)); and
- (f) prescribe labelling requirements and restrictions for business and consumer sales of relevant flavourings (remainder of regulation 3, regulation 4 and Schedule 3).