

2007 No. 419

FOOD

The Plastic Materials and Articles in Contact with Food (Lid Gaskets) Regulations (Northern Ireland) 2007

Made - - - - 1st October 2007

Coming into operation - 5th November 2007

The Department of Health, Social Services and Public Safety(a) makes the following Regulations in exercise of the powers conferred by Articles 15(2)(c), 16(2), 25(1)(a) and (3), 32 and 47(2) of the Food Safety (Northern Ireland) Order 1991(b).

In accordance with Article 47(3A) of that Order, it 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 Plastic Materials and Articles in Contact with Food (Lid Gaskets) Regulations (Northern Ireland) 2007 and come into operation on 5th November 2007.

Interpretation

2.—(1) In these Regulations —

“the Commission Regulation” means Commission Regulation (EC) No. 372/2007 laying down transitional migration limits for plasticisers in gaskets in lids intended to come into contact with foods(d);

“authorised officer” means any person who is authorised in writing, either generally or specifically, by a district council to act in matters arising under these Regulations;

“import” means import in the course of a business from a place other than a Member State;

(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), paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c.28 and S.R. 2004 No.482 and S.R. 2004 No.505

(c) OJ No.L31, 1.2.2002, p.1; that Regulation was last amended by Commission Regulation (EC) No.575/2006 (OJ No.L100, 8.4.2006, p.3)

(d) OJ No. L92, 3.4.2007, p.9; recital 2 of the Regulation was corrected by a corrigendum, (OJ No. L97, 12.4.2007, p.70), which made a minor correction to a date forming part of the citation to an EC instrument

“lid” means a lid of the type mentioned in Article 1 of the Commission Regulation;

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

(2) Any other expression used in these Regulations and in the Commission Regulation has the same meaning in these Regulations as it bears in the Commission Regulation.

Enforcement

3. It shall be the duty of each district council within its district to execute and enforce these Regulations and the Commission Regulation.

Offences and penalties

4.—(1) Any person who —

- (a) contravenes or fails to comply with the requirements of Article 1 of the Commission Regulation (requirements relating to lids sealed with gaskets containing certain plasticising substances);
- (b) intentionally obstructs any person acting in the execution of these Regulations;
- (c) without reasonable excuse, fails to give to any person acting in the execution of these Regulations or the Commission Regulation any assistance or information which that person may reasonably require; or
- (d) in purported compliance with any requirement mentioned in sub-paragraph (c), knowingly or recklessly supplies information that is false or misleading in any material particular,

is guilty of an offence.

(2) Anyone convicted of an offence under these Regulations is liable —

- (a) in the case of an offence under paragraph (1)(a) —
 - (i) on conviction on indictment to a term of imprisonment not exceeding two years or to a fine or both;
 - (ii) on summary conviction to a term of imprisonment not exceeding six months or to a fine not exceeding the statutory maximum or both;
- (b) in the case of an offence under paragraph 1(b), (c) or (d), on summary conviction to a term of imprisonment not exceeding three months or to a fine not exceeding level five on the standard scale or both.

(3) Nothing in paragraph (1)(c) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate him.

Offences due to an act or default of a third party

5. Where the commission by any person of an offence under these Regulations is due to an act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence whether or not proceedings are taken against the first mentioned person.

Time limit for prosecutions

6. A prosecution for an offence under these Regulations shall not be begun after the expiry of three years from the commission of the offence or one year from its discovery by the prosecution, whichever is the earlier.

Defence of due diligence

7.—(1) In any proceedings for an offence under these Regulations it shall, subject to paragraph (4), be a defence for the person accused to prove that he took all reasonable precautions and

exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under regulation 4(1)(a) who did not —

- (a) prepare the lid in respect of which the offence is alleged to have been committed; nor
- (b) import it into the United Kingdom,

shall be taken to have established the defence provided by paragraph (1) if he satisfies the requirements of paragraph (3).

(3) A person satisfies the requirements of this paragraph if he proves —

- (a) that the commission of the offence was due to the act or default of some other person who was not under his control, or to reliance on information supplied by such a person;
- (b) that the placing on the market of which the alleged offence consisted was not a placing on the market under his name or mark;
- (c) that either —
 - (i) he carried out all such checks of the lid in question as were reasonable in all the circumstances, or
 - (ii) it was reasonable in all the circumstances for him to rely on checks carried out by the person who supplied him with the lid in question; and
- (d) that he did not know and had no reason to suspect at the time the offence was committed that his act or omission would amount to an offence under regulation 4(1)(a).

(4) If in any case the defence provided by paragraph (1) involves the allegation that the commission of the offence was due to the act or default of another person, or to reliance on information supplied by another person, the person accused shall not, without leave of the court, be entitled to rely on that defence unless —

- (a) at least seven clear days before the hearing; and
- (b) where he has previously appeared before a court in connection with the alleged offence, before the expiration of one month from his first such appearance,

he has served on the prosecution a notice in writing giving such information identifying or assisting in the identification of that other person as was then in his possession.

Procedure where a sample is to be analysed

8.—(1) An authorised officer who has procured a sample under Article 29 of the Order and who considers it should be analysed shall divide the sample into three parts.

(2) If the sample consists of sealed containers and opening them would, in the opinion of the authorised officer, impede a proper analysis, the authorised officer shall divide the sample into parts by putting the containers into three lots, and each lot shall be treated as being a part.

(3) The authorised officer shall —

- (a) if necessary place each part in a suitable container and seal it;
- (b) mark each part or container;
- (c) as soon as reasonably practicable, give one part to the owner and notify him in writing that the sample will be analysed;
- (d) submit one part for analysis in accordance with Article 30 of the Order; and
- (e) retain one part for future submission under regulation 9.

Secondary analysis by the Government Chemist

9.—(1) Where a sample has been retained under regulation 8 and —

- (a) proceedings are intended to be or have been commenced against a person for an offence under these Regulations; and

- (b) the prosecution intends to adduce as evidence the result of the analysis mentioned in regulation 8,

paragraphs (2) to (7) apply.

(2) The authorised officer —

- (a) may of his own volition; or
- (b) shall —
 - (i) if requested by the prosecutor (if a person other than the authorised officer);
 - (ii) if the court so orders; or
 - (iii) (subject to paragraph (6)) if requested by the defendant,

send the retained part of the sample to the Government Chemist for analysis.

(3) The Government Chemist shall analyse the part sent to him under paragraph (2) and send to the authorised officer a certificate specifying the result of the analysis.

(4) Any certificate sent by the Government Chemist shall be signed by him or on his behalf, but the analysis may be carried out by any person under the direction of the person who signs the certificate.

(5) The authorised officer shall immediately on receipt supply the prosecutor (if a person other than the authorised officer) and the defendant with a copy of the Government Chemist's certificate.

(6) Where a request is made under paragraph (2)(b)(iii) the authorised officer may give notice in writing to the defendant requesting payment of a fee specified in the notice to defray some or all of the Government Chemist's charges for performing the functions under paragraph (3), and in the absence of agreement by the defendant to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

(7) In this regulation "defendant" includes a prospective defendant.

Application of various Articles of the Food Safety (Northern Ireland) Order 1991

10. The following provisions of the Order shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Order or Part thereof shall be construed as a reference to these Regulations —

- (a) Article 4 (presumptions that food intended for human consumption);
- (b) Article 30(8) (which relates to documentary evidence);
- (c) Article 43 (protection of public analyst acting in good faith).

Amendment of the Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991

11. In the Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 1991(a), in Schedule 1 (provisions to which those Regulations do not apply), at the end add the title of these Regulations.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 1st October 2007.



Andrew McCormick

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

(a) S.R. 1991 No.198, as amended by S.R. 1998 No.237, S.R. 1998 No.264 and S.R. 1999 No.30

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the execution and enforcement of Commission Regulation (EC) No 372/2007 laying down transitional migration limits for plasticisers in gaskets in lids intended to come into contact with foods (OJ No. L92, 3.4.2007, p.9) (“the Commission Regulation”)

The Regulations —

- (a) designate the bodies having the duty to enforce these Regulations and the Commission Regulation (*regulation 3*);
- (b) provide that it is an offence to contravene the requirements of Article 1 of the Commission Regulation, which provides that lids containing gaskets made of plastic materials must comply with the detailed specifications set out in the Annex to that Regulation, and specify the maximum penalties on conviction (*regulation 4(1)(a) and (2)(a)*);
- (c) provide that it is a summary offence to obstruct, fail to give information to or give false information to anyone enforcing these Regulations and specify the maximum penalties on conviction (*regulation 4(1)(b),(c)&(d) and (2)(b)*);
- (d) provide for the prosecution of a person who causes the commission of an offence under these Regulations by another person whether or not proceedings are started against the principal offender (*regulation 5*);
- (e) specify a time limit for commencing a prosecution (*regulation 6*);
- (f) provide for a defence to offences under these Regulations of exercising due diligence (*regulation 7*);
- (g) specify the procedure to be followed when sending a sample for analysis (*regulation 8*);
- (h) make provision for a reference sample to be analysed by the Laboratory of the Government Chemist (*regulation 9*); and
- (i) apply certain provisions of the Food Safety (Northern Ireland) Order 1991 for the purposes of these Regulations (*regulation 10*).