

2007 No. 60

FOOD

**The Notification of Marketing of Food for Particular Nutritional
Uses Regulations (Northern Ireland) 2007**

Made - - - - - *2nd February 2007*

Coming into operation - - - - - *1st March 2007*

The Department of Health, Social Services and Public Safety^(a) makes the following Regulations in exercise of the powers conferred by Articles 16(1), 25(1)(a) and (3), 26(3) 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 the 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 Notification of Marketing of Food for Particular Nutritional Uses Regulations (Northern Ireland) 2007 and shall come into operation on 1st March 2007.

Interpretation

2.—(1) In these Regulations—

“the Agency” means the Food Standards Agency;

“the Directive” means Council Directive 89/398/EEC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses;^(d)

(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. 1996/1663 (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. L31, 1.2.2002, p. 1. as last amended by Commission Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p3) amending Regulation (EC) No. 178/2002 of the European Parliament and of the Council as regards the number and names of the Permanent Scientific Panels of the European Food Safety Authority (OJ No. L100, 8.4.2006, p3). By virtue of Regulation 5 of the Food Safety (Northern Ireland) Order 1991 (Amendment) Regulations (Northern Ireland) 2004 (S.R. 2004 No.482), with effect from 7th December 2004 the consultation requirement contained in Article 47(3) of the 1991 Order is disappplied in any case in which consultation is required by Article 9 of Regulation (EC) No. 178/2002
(d) OJ No. L186, 30.6.89, p.27, as last amended as at the making of this instrument by Regulation (EC) No. 1882/2003 (OJ No. L284, 31.10.2003, p.1). Annex 1 to Council Directive 89/398/EEC was replaced by Directive 1999/41/EC (OJ No. L172, 8.7.99, p.38)

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

“PNU food” means a food for a particular nutritional use which—

- (a) owing to its special composition or process of manufacture, is clearly distinguishable from food intended for normal consumption, and
- (b) is sold in such a way as to indicate its suitability for its claimed particular nutritional purpose,

but does not fall within any of the following classifications—

- (i) infant formulae and follow-on formulae,
- (ii) processed cereal-based foods and baby foods for infants and young children,
- (iii) food intended for use in energy-restricted diets for weight reduction,
- (iv) dietary foods for special medical purposes,
- (v) foods intended to meet the expenditure of intense muscular effort, especially for sportsmen, and
- (vi) foods for persons suffering from carbohydrate-metabolism disorders (diabetes);

“particular nutritional use” means the fulfilment of the particular nutritional requirements of—

- (a) certain categories of persons whose digestive processes are, or whose metabolism is, disturbed, or
- (b) certain categories of persons whose physiological condition renders them able to obtain a special benefit from the controlled consumption of any substance in food, or
- (c) infants or young children in good health; and

“sell” includes possess for sale and offer, expose or advertise (otherwise than by means of a label or wrapper) for sale.

(2) Other expressions used in these Regulations and in the Directive have the same meaning in these Regulations as they have in the Directive.

Restriction on sale

3.—(1) No person who, in respect of a PNU food product of a particular type—

- (a) is a manufacturer or an importer referred to in Article 9 of the Directive, but
- (b) has failed to comply with—
 - (i) a requirement to notify the competent authority, as referred to in paragraph 1 or 2 of that Article, or
 - (ii) a requirement to produce anything to the competent authority, as referred to in paragraph 3 of that Article,

shall sell a PNU food product of that type.

(2) For the purposes of paragraph (1) the competent authority is—

- (a) in respect of PNU food manufactured in Northern Ireland, or imported into Northern Ireland from outside the United Kingdom, the Food Standards Agency;
- (b) in respect of PNU food manufactured in (or imported from outside the United Kingdom into) another territory within the United Kingdom, the authority duly designated in that territory as the competent authority for the purposes of Article 9 of the Directive in respect of the food.

Declaration

4.—(1) Where the Agency has detailed grounds for establishing that a foodstuff intended for a particular nutritional use which does not belong to one of the groups listed in Annex I to the Directive does not comply with Article 1(2) of the Directive or endangers human health, it may by written declaration suspend or restrict trade in that product.

(2) Such a declaration shall be published in such manner as the Agency thinks fit and shall specify the product concerned.

(3) A declaration which imposes conditions on trade in any product shall specify those conditions.

(4) Where a declaration is in force suspending trade in any product, no person shall trade in that product.

(5) Where a declaration is in force imposing conditions on trade in any product, no person shall trade in that product unless the product complies with conditions specified in the declaration.

(6) A declaration may be modified, suspended or revoked by a further written declaration published, so far as is practicable, in the same manner and to the same extent as the original declaration.

Enforcement

5. Each district council shall enforce and execute these Regulations in its district.

Offences and penalties

6. If any person without reasonable cause contravenes regulation 3(1) or regulation 4(4) or (5), he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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

7. The following provisions of the Order shall apply for the purposes of these Regulations and any reference in those provisions to the Order or Part thereof 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 (presumptions that food intended for human consumption);
- (c) Article 19 (offences due to fault of another person);
- (d) Article 20 (defence of due diligence) as it applies for the purposes of Article 13 or 14 of the Order;
- (e) Article 21 (defence of publication in the course of business);
- (f) Article 30(8) (which relates to documentary evidence);
- (g) Article 34(1) (obstruction etc. of officers);
- (h) Article 34(2), with the modification that the reference to “any such requirement as is mentioned in paragraph (1)(b)” shall be deemed to be a reference to any such requirement as is mentioned in that paragraph as applied by paragraph (g);
- (i) Article 36(1) (punishment of offences) in so far as it relates to offences under Article 34(1) as applied by paragraph (g);
- (j) Article 36(2) and (3) in so far as it relates to offences under Article 34(2) as applied by paragraph (h);

Revocation

8. The Notification of Marketing of Food for Particular Nutritional Uses Regulations (Northern Ireland) 2002(a) are revoked.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 2nd February 2007.

(a) S.R. 2002 No.35



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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Articles 9 and 11 of Council Directive 89/398/EEC on the approximation of the laws of the Member States relating to foodstuffs intended for particular nutritional uses, (OJ No. L186, 30.6.1989, p.27), as last amended by Regulation (EC) No. 1882/2003 (OJ No. L284, 31.10.2003, p.1).

The Regulations concern foods which, owing to their special composition or manufacturing process, are clearly distinguishable from foods for normal consumption, and which are marketed as suitable for categories of consumers with disturbed digestive processes or metabolism or in a special physiological condition, or for infants or young children in good health, but which are neither covered nor to be covered by other Directives on specific types of foodstuffs for particular nutritional uses (the definition of “PNU food” in regulation 2(1) refers).

These Regulations—

- (a) prohibit the sale of such products unless the requirements of Article 9 of the Directive (notification to competent authorities of such products) have been complied with (*regulation 3*); and
- (b) enable the Agency by written declaration to suspend or restrict trade in products intended for a particular nutritional use where it has detailed grounds for establishing that the product does not comply with Article 1(2) of the Directive (requirements for foodstuffs for particular nutritional uses) or endangers human health (*regulation 4*).

Enforcement responsibilities, offences and penalties and application of provisions of the Food Safety (Northern Ireland) Order 1991 are set out in regulations 5, 6 and 7 of these Regulations.

These Regulations revoke and replace the Notification of Marketing of Food for Particular Nutritional Uses Regulations (Northern Ireland) 2002 (S.R. 2002 No.35) (*regulation 8*).

Labelling provisions of the Directive are implemented in the Food Labelling Regulations (Northern Ireland) 1996 (S.R. 1996 No.383).