

2009 No. 398

FOOD

**The Food for Particular Nutritional Uses (Addition of
Substances for Specific Nutritional Purposes) Regulations
(Northern Ireland) 2009**

Made - - - - *30th November 2009*

Coming into operation - *1st January 2010*

The Department of Health, Social Services and Public Safety(**a**) makes the following Regulations in exercise of the powers conferred by Articles 15(1)(a) and (f), 16(1) and (2), 25(1)(a) and (3) and 47(2) of the Food Safety (Northern Ireland) Order 1991(**b**) as read with 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, Social Services and Public Safety that it is expedient for any reference to the Annex to Commission Regulation (EC) No. 953/2009 on substances that may be added for specific nutritional purposes in foods for particular nutritional uses(**d**) to be construed as a reference to that Annex as amended from time to time.

In accordance with Article 47(3A) of the Food Safety (Northern Ireland) Order 1991, the Department of Health, Social Services and Public Safety 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(**e**) there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

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- (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) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51)
(d) OJ No. L269, 14.10.2009, p.9
(e) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p.14)

Citation and commencement

1. These Regulations may be cited as the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) Regulations (Northern Ireland) 2009 and come into operation on 1st January 2010.

Interpretation

2.—(1) In these Regulations—

“the Commission Regulation” means Commission Regulation (EC) No. 953/2009 on substances that may be added for specific nutritional purposes in foods for particular nutritional uses;

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

“specified provision” means any provision of the Commission Regulation that is specified in Column 1 of the Schedule and whose subject-matter is described in Column 2 of the Schedule.

(2) Subject to paragraph (3), any expression other than one defined in paragraph (1) that is used both in these Regulations and in the Order has the meaning it bears in the Order.

(3) Any expression used both in these Regulations and in the Commission Regulation has the meaning that it bears in the Commission Regulation.

(4) In these Regulations any reference to the Annex to the Commission Regulation is a reference to that Annex as amended from time to time.

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

Offences, penalties and execution and enforcement

3.—(1) Any person who contravenes any of the specified provisions shall be guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Each district council shall execute and enforce these Regulations within its district.

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

4. 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 19 (offences due to fault of another person);
- (c) Article 20 (defence of due diligence), as it applies for the purpose of Articles 13 or 14;
- (d) Article 30(8) (which relates to documentary evidence);
- (e) Article 34(1) (obstruction etc. of officers);
- (f) 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 Article 34(1)(b) as applied by paragraph (e);
- (g) Article 36(1) (punishment of offences), in so far as it relates to offences under Article 34(1) as applied by paragraph (e); and
- (h) Article 36(2) and (3), in so far as it relates to offences under Article 34(2) as applied by paragraph (f).

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

Amendment to the Tryptophan in Food Regulations (Northern Ireland) 2005

5.—(1) The Tryptophan in Food Regulations (Northern Ireland) 2005(a) are amended in accordance with paragraphs 2 and 3.

(2) For regulation 2(1) (interpretation), for the definition “Directive 2001/15/EC” there is substituted—

““Regulation 953/2009” means Commission Regulation (EC) No. 953/2009 on substances that may be added for specific nutritional purposes in foods for particular nutritional uses;”.

(3) For regulation 5(2)(c) (exceptions from prohibitions), there is substituted—

“(c) laevorotatory tryptophan, its sodium, potassium, calcium or magnesium salts or its hydrochloride, added in compliance with Regulation 953/2009 to any food for a particular nutritional use referred to in the Annex to that Regulation;”.

Revocation

6. The following Regulations are revoked—

- (a) the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) Regulations (Northern Ireland) 2002 (b);
- (b) the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Amendment) Regulations (Northern Ireland) 2004 (c); and
- (c) the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Amendment) Regulations (Northern Ireland) 2006 (d).

Sealed with the official seal of the Department of Health, Social Services and Public Safety on 30th November 2009.



Christine Jendoubi

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

(a) S.R. 2005 No. 440
(b) S.R. 2002 No. 264
(c) S.R. 2004 No. 105
(d) S.R. 2006 No. 481

THE SCHEDULE

Regulations 2(1) and 3(1)

Specified Provisions

<i>Column 1</i> <i>Provision of the Commission Regulation</i>	<i>Column 2</i> <i>Subject matter</i>
Article 2(1)	Requirement that among the substances belonging to the categories appearing in the Annex to the Commission Regulation, only those listed in that Annex, complying with the relevant specifications as necessary may be added for specific nutritional purposes in the manufacture of foodstuffs for particular nutritional uses covered by Directive 2009/39 of the European Parliament and the Council on foodstuffs intended for particular nutritional uses(a).
Article 3(1)	Requirement that the use of substances added for specific nutritional purposes shall result in the manufacture of safe products that fulfil the particular nutritional requirements of the persons for whom they are intended, as established by generally accepted scientific data.
Article 3(2)	Requirement that upon request by the competent authority referred to in Article 11 of Directive 2009/39, the manufacturer or, where appropriate, the importer shall produce the scientific work and the data establishing that the use of the substances complies with Article 3(1) of the Commission Regulation. If such work and data are contained in a readily available publication, a mere reference to that publication shall suffice.
Article 4(2)	Requirement that purity criteria established by Community legislation which apply to the substances listed in the Annex to the Commission Regulation when they are used in the manufacture of foodstuffs for purposes other than those covered by the Commission Regulation shall also apply to those substances when they are used for purposes covered by the Commission Regulation.
Article 4(3)	Requirement that for substances listed in the Annex to the Commission Regulation for which purity criteria are not established by Community legislation, and until the adoption of such

(a) OJ No. L124, 20.5.2009, p.21

<i>Column 1</i> <i>Provision of the Commission Regulation</i>	<i>Column 2</i> <i>Subject matter</i>
	specifications, generally acceptable purity criteria recommended by international bodies shall apply.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the execution and enforcement of Commission Regulation (EC) No. 953/2009 on substances that may be added for specific nutritional purposes in foods for particular nutritional uses (OJ No. L269, 14.10.2009, p.9) (“the Commission Regulation”). The Commission Regulation repeals and replaces Commission Directive 2001/15/EC on substances that may be added for specific nutritional purposes in food for particular nutritional uses (OJ No. L52, 22.2.2001, p.19) and Commission Directive 2004/6/EC derogating from Directive 2001/15/EC to postpone the application of the prohibition of trade to certain products (OJ No. L15, 22.1.2004, p.31).

These Regulations —

- (a) provide that a person who contravenes specified provisions of the Commission Regulation set out in the Schedule to these Regulations is guilty of an offence (*regulation 3(1)*);
- (b) provide penalties for offences (*regulation 3(2)*);
- (c) specify the enforcement authority (*regulation 3(3)*);
- (d) provide for the application of specified provisions of the Food Safety (Northern Ireland) Order 1991 for the purposes of these Regulations (*regulation 4*);
- (e) make consequential amendments to the Tryptophan in Food Regulations (Northern Ireland) 2005 (S.R. 2005 No. 440) (*regulation 5*); and
- (f) revoke the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) Regulations (Northern Ireland) 2002 (S.R. 2002 No. 264); the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Amendment) Regulations (Northern Ireland) 2004 (S.R. 2004 No. 105); and the Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Amendment) Regulations (Northern Ireland) 2006 (S.R. 2006 No. 481) (*regulation 6*).

Article 3(2) of the Commission Regulation refers to the competent authorities referred to in Article 11 of Directive 2009/39/EC of the European Parliament and of the Council on foodstuffs intended for particular nutritional uses (OJ No. L124, 20.5.2009, p.21). The Notification of Marketing of Food for Particular Nutritional Uses Regulations (Northern Ireland) 2007 (S.R. 2007 No. 60) provide at regulation 3 that the Food Standards Agency is the competent authority in respect of food for a particular nutritional use manufactured in Northern Ireland or imported into Northern Ireland from outside the United Kingdom.

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