
STATUTORY RULES OF NORTHERN IRELAND

2012 No. 384

**The Materials and Articles in Contact with
Food Regulations (Northern Ireland) 2012**

PART 9

Enforcement

Offences and penalties

19.—(1) Any person who contravenes the provisions of regulation 10(3) or (4), 12(8) or 18(2) is guilty of an offence.

(2) Any person who intentionally obstructs any person acting in the execution of Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009, Regulation 10/2011 or these Regulations is guilty of an offence.

(3) Any person who without reasonable excuse, fails to provide any assistance or information which that person may reasonably require for the performance of their functions under the Regulations mentioned in paragraph (2); or fails to comply with Regulation 10(6) is guilty of an offence.

(4) Any person who in purported compliance with any requirement mentioned in paragraph (3), knowingly or recklessly supplies information that is false or misleading in any material particular, is guilty of an offence.

(5) Any person guilty of an offence under these Regulations is liable —

(a) in the case of an offence created by paragraph (1) or (4) or regulation 4(3), 5, 7(1), 14(1) or 16(4) —

(i) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or both; or

(ii) on summary conviction to a fine not exceeding the statutory maximum; and

(b) in the case of an offence created by paragraph (2) or (3) or regulation 7(2) or 14(2), on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) Nothing in paragraph (2) or (3) is to be construed as requiring any person to answer any question or give any information if to do so might incriminate them.

Enforcement

20.—(1) Each district council in its district must execute and enforce —

(a) Regulation 1935/2004, Regulation 1895/2005, Regulation 450/2009 and Regulation 10/2011;

(b) The provisions of Regulation 2023/2006 specified in Regulation 5; and

(c) these Regulations.

- (2) The Food Standards Agency may also execute and enforce the provisions of —
- (a) Articles 16(1) and 17(2) of Regulation 1935/2004; and
 - (b) Article 13 of Regulation 450/2009.

Offences due to the act or default of a third party

21. Where the commission by any person of an offence under these Regulations is due to the act or default of some other person, that other person is 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

22.—(1) A prosecution for an offence under these Regulations shall not be commenced 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.

- (2) Paragraph (1) does not apply to an offence under regulation 7(2), 14(2) or 19(2) or (3).

General defences

23.—(1) In any proceedings for an offence under these Regulations it is, subject to paragraph (5), a defence to prove that the person accused (“the accused”) took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by the accused or by a person under the control of the accused.

(2) Without prejudice to the generality of paragraph (1), a person accused of an offence under regulation 4(3), 7(1), 14(1), 16(4) or 19(1) who did not import or prepare the material or article in respect of which the offence is alleged to have been committed shall be taken to have established the defence provided by paragraph (1) if the requirements of paragraphs (3) or (4) are satisfied.

(3) The requirements of this paragraph are satisfied if it is proved that —

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reliance on information supplied by such a person;
- (b) either —
 - (i) the accused carried out all such checks of the material or article in question as were reasonable in all the circumstances, or
 - (ii) it was reasonable in all the circumstances for the accused to rely on checks carried out by the person who supplied the accused with that material or article; and
- (c) the accused did not know and had no reason to suspect at the time the offence was committed that the act or omission would amount to an offence under these Regulations.

(4) The requirements of this paragraph are satisfied if the offence is one of placing on the market and it is proved that —

- (a) the commission of the offence was due to the act or default of some other person who was not under the control of the accused, or to reliance on information supplied by such a person;
- (b) the placing on the market which the offence consisted was not done under the name or mark of the accused; and
- (c) the accused did not know and could not reasonably be expected to know at the time the offence was committed that the act or omission would amount to an offence under these Regulations.

(5) If in any case the defence provided by this regulation 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 accused is not entitled to rely on that defence, without leave of the court, unless —

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

the accused 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 the possession of the accused.

Procedure where a sample is to be analysed

24.—(1) An authorised officer who has procured a sample under Article 29 of the Order and who considers it should be analysed must 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 must divide the sample into parts by putting the containers into three lots, and each lot must be treated as being a part.

- (3) The authorised officer must —
 - (a) if necessary place each part in a suitable container and seal it;
 - (b) mark each part or container;
 - (c) as soon as is reasonably practicable, give one part to the owner and notify the owner 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 25.

Secondary analysis by the Government Chemist

25.—(1) Where a sample has been retained under regulation 24(3)(e) 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 24(1),

paragraphs (2) to (7) apply.

- (2) The authorised officer —
 - (a) may of the officer's own volition; or
 - (b) must —
 - (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 accused,

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

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

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

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

(6) Where a request is made under paragraph (2)(b)(iii) the authorised officer may give notice in writing to the accused 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 accused to pay the fee specified in the notice the authorised officer may refuse to comply with the request.

(7) In this regulation "the accused" includes a person against whom an authorised officer is intending to commence proceedings.

Application of various provisions of the Order

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

- (a) Article 2(4) (extending meaning of "sale" etc);
- (b) Article 30(8) (which relates to documentary evidence).

(2) In the application of Article 33 of the Order (powers of entry) for the purposes of these Regulations, the reference in paragraph (1) to the Order must be construed as including a reference to Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009 or Regulation 10/2011 as appropriate.

(3) Article 4 of the Order (presumptions that food is intended for human consumption) applies for the purposes of these Regulations with the modification that any reference in that Article to the Order must be construed as including a reference to —

- (a) Regulation 1935/2004, Regulation 1895/2005, Regulation 2023/2006, Regulation 450/2009 or Regulation 10/2011, and
- (b) these Regulations;

and that the references to "sold", and "sale" are deemed to include references to "placed on the market" and "placing on the market".