

2017 No. 233

FOOD

The Novel Foods Regulations (Northern Ireland) 2017

Made - - - - *6th December 2017*

Coming into operation - *1st January 2018*

The Department of Health^(a) makes the following Regulations in exercise of the powers conferred by Articles 15(1)(a), (e) and (f), 16(2), 17(1)(a), 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 the Food Safety (Northern Ireland) Order 1991, the Department of Health 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 Novel Foods Regulations (Northern Ireland) 2017 and come into operation on 1st January 2018.

Interpretation

2.—(1) In these Regulations—

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

“Regulation (EU) 2015/2283” means Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001^(d); and

“specified EU provision” means a provision of Regulation (EU) 2015/2283 specified in column 1 and described in column 2 of the table in Schedule 1.

(a) Formerly the Department of Health, Social Services and Public Safety; see 2016 c.5 (N.I.), section 1
(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. L 31, 1.2.2002, p.1 as last amended by Regulation (EU) No. 652/2014 of the European Parliament and of the Council of 15th May 2014 (OJ No. L 189, 27.6.2014, p.1)
(d) OJ No. L 327, 11.12.2015, p.1

(2) An expression used both in these Regulations and Regulation (EU) 2015/2283 has the meaning that it bears in Regulation (EU) 2015/2283 and any reference to a numbered article is a reference to the article so numbered in Regulation (EU) 2015/2283.

Enforcement

3. It is the duty of each district council within its district to enforce Regulation (EU) 2015/2283 and these Regulations.

Offence and penalty

4. A person who fails to comply with Article 6(2) (Union list of authorised novel foods) as read with Articles 24 and 35(2) of Regulation (EU) 2015/2283 is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Application and modification of provisions of the Order

5.—(1) Articles 9(1) and (2) of the Order (improvement notices) apply for the purposes of these Regulations with the modification (in the case of Article 9(1)) set out in Schedule 2, Part 1 for the purposes of—

- (a) enabling an improvement notice to be served on a person requiring the person to comply with a specified EU provision; and
- (b) making the failure to comply with a notice referred to in subparagraph (a) an offence.

(2) Article 8 of the Order (inspection and seizure of suspected food) applies for the purposes of these Regulations with the modifications set out in Part 2 of Schedule 2 for the purposes of enabling an authorised officer of a district council, if it appears to that officer that Article 6(2) of Regulation (EU) 2015/2283 is being, or has been, contravened in relation to any food which has been placed on the market, to either—

- (a) give notice to the person in charge of the food that it is not to be used for human consumption, and is not to be removed or is not to be removed except to some place specified in the notice, or
- (b) seize the food and remove it in order to have it dealt with by a justice of the peace.

(3) The provisions of the Order specified in column 1 of the table in Part 3 of Schedule 2 apply, with the modifications (if any) specified in column 2 of that table for the purpose of these Regulations.

(4) Paragraphs (1) to (3) are without prejudice to the application of the Order to these Regulations for purposes other than those specified in paragraphs (1) and (2).

Revocations

6. The following regulations are revoked—

- (a) The Novel Foods and Novel Food Ingredients Regulations (Northern Ireland) 2004(a); and
- (b) The Food Enzymes Regulations (Northern Ireland) 2009(b).

Sealed with the official seal of the Department of Health on 6th December 2017.



(a) S.R. 2004 No.33
(b) S.R. 2009 No.415

Richard Pengelly
A senior officer of the Department of Health

SCHEDULE 1

Regulation 2(1)

Specified EU Provisions

<i>1. Specified EU Provision</i>	<i>2. Subject matter</i>
Article 4(1)	Requirement that food business operators verify whether food they intend to place on the market is within scope of Regulation (EU) 2015/2283.
Article 6(2) as read with Articles 24 and 35(2)	Requirement that only novel foods authorised and included in the Union list may be placed on the market or used in or on food and in accordance with the conditions of use and the labelling requirements specified therein, and with any post-market monitoring requirements.
Article 25	Requirement that a food business operator who has placed a novel food on the market must immediately inform the Commission of any information of which it becomes aware concerning— (a) any new scientific or technical information which might influence the evaluation of the safety of use of the novel food; or (b) any prohibition or restriction imposed by a third country in which the novel food is placed on the market.

SCHEDULE 2

Regulation 5

Application and modification of provisions of the Order

PART 1

Modification of Article 9(1)

1. For Article 9(1) of the Order (improvement notices) substitute—

“(1) If an authorised officer has reasonable grounds for believing that a person is failing to comply with any provision specified in Schedule 1 to the Novel Foods Regulations (Northern Ireland) 2017, the authorised officer may, by a notice served on that person (in this Order referred to as an “improvement notice”) —

- (a) state the officer’s grounds for believing that the person is failing to comply with the relevant provision;
- (b) specify the matters which constitute the person’s failure so to comply;
- (c) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and

- (d) require the person to take those measures, or measures that are at least equivalent to them, within such period (not being less than 14 days) as may be specified in the notice.”.

PART 2

Modification of Article 8

2. For Article 8 (inspection and seizure of suspected food) substitute—

“(1) This Article applies where it appears to an authorised officer that Article 6(2) of Regulation (EU) 2015/2283 is being, or has been contravened in relation to any food which has been placed on the market.

(2) The authorised officer may either—

- (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food—
 - (i) is not to be used for human consumption; and
 - (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or
- (b) seize the food and remove it in order to have it dealt with by a justice of the peace; and any person who knowingly contravenes the requirements of a notice under subparagraph (a) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where the authorised officer gives notice under paragraph (2)(a), the authorised officer shall, as soon as is reasonably practicable and in any event within 21 days from the date of the notice, determine whether or not they are satisfied that the food complies with Article 6(2) of Regulation (EU) 2015/2283, and—

- (a) if so satisfied, immediately withdraw the notice;
- (b) if not so satisfied, seize the food and remove it in order to have it dealt with by a justice of the peace.

(4) Where an authorised officer seizes and removes food under paragraph (2)(b) or (3)(b), the authorised officer shall inform the person in charge of the food that it is to be dealt with by a justice of the peace and any person who might be liable to a prosecution in respect of the food shall, if attending before the justice of the peace by whom the food falls to be dealt with, be entitled to be heard and to call witnesses.

(5) If it appears to a justice of the peace, on the basis of such evidence as the justice of the peace considers appropriate in the circumstances, that any food falling to be dealt with under this Article fails to comply with Article 6(2) of Regulation (EU) 2015/2283, the justice of the peace shall condemn the food and order—

- (a) the food to be destroyed or to be disposed of as to prevent it from being used for human consumption; and
- (b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the food.

(6) If a notice under paragraph (2)(a) is withdrawn, or the justice of the peace by whom any food falls to be dealt with under this Article refuses to condemn it, the district council shall compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(7) Any disputed question as to the right to or the amount of any compensation payable under paragraph (6) shall be determined by arbitration.

(8) For the purpose of this Article, “Regulation (EU) 2015/2283” means Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel

foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001.”.

PART 3

Application and modification of other provisions of the Order

<i>Column 1</i>	<i>Column 2</i>
<i>Provision of the Order</i>	<i>Modifications</i>
Article 2(4) (extended meaning of “sale” etc.)	For “this Order” substitute “the Novel Foods Regulations (Northern Ireland) 2017,”
Article 3 (application to food offered as prizes, etc.)	For “this Order” substitute “the Novel Foods Regulations (Northern Ireland) 2017,”.
Article 4 (presumptions that food intended for human consumption)	For “this Order” substitute “the Novel Foods Regulations (Northern Ireland) 2017,”.
Article 19 (offences due to fault of another person)	For “any of the preceding provisions of this Part” substitute “Article 9(2) as applied by regulation 5(1) of the Novel Foods Regulations (Northern Ireland) 2017 or regulation 4 of those regulations,”
Article 20(1) and (5) (defence of due diligence)	In paragraph (1), for “any of the preceding provisions of this Part” substitute “Article 9(2), as applied by regulation 5(1) of the Novel Foods Regulations (Northern Ireland) 2017 or regulation 4 of those regulations,”.
Article 30(8) (which relates to documentary evidence)	For “this Order” substitute “ the Novel Foods Regulations (Northern Ireland) 2017,”
Article 33 (powers of entry)	In paragraph (1) for subparagraphs (a) to (c) substitute “(a) to enter any premises within the council’s district for the purpose of ascertaining whether there is or has been on the premises any contravention of any of the provisions of Schedule 1 of the Novel Foods Regulations (Northern Ireland) 2017 (except the first provision specified in the table in Schedule 1 “Article 4(1)”.”
Article 34 (obstruction etc. of officers)	In each place occurring in paragraph (1), for “this Order” substitute “the Novel Foods Regulations (Northern Ireland) 2017”.
Article 37 (appeals)	For paragraph (1) substitute “(1) Any person who is aggrieved by a decision of an authorised officer to serve an improvement notice under Article 9(1) as applied and modified by regulation 5(1) and Schedule 2 of the Novel Foods Regulations (Northern Ireland) 2017 may appeal to a court of summary jurisdiction”. In paragraph (2A)(b) for “(1)(a)” substitute “(1) as applied by regulation 5(2) of the Novel Food Regulations (Northern Ireland) 2017
Article 38 (appeals against improvement notices)	In both paragraphs (1) and (2) insert “as applied and modified by regulation 5(1) and Schedule 2 of the Novel Foods Regulations (Northern Ireland) 2017,” after “improvement notice”.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the execution and enforcement of Regulation (EU) 2015/2283 of the European Parliament and of the Council of 25 November 2015 on novel foods, amending Regulation (EU) No 1169/2011 of the European Parliament and of the Council and repealing Regulation (EC) No 258/97 of the European Parliament and of the Council and Commission Regulation (EC) No 1852/2001 (OJ No L 327, 11.12.2015, p 1).

These Regulations —

- (a) make district councils, within their district, responsible for the enforcement of Regulation (EU) 2015/2283 and these Regulations (regulation 3);
- (b) provide that it is an offence for a person to fail to comply with Article 6(2) of the Novel Foods Regulation, punishable on summary conviction by a fine not exceeding level 5 on the standard scale. Article 6(2) provides that only novel foods authorised by the European Commission and included in the European Union’s list of novel foods may be placed on the market within the European Union, and the foods must be in accordance with conditions of use and the labelling requirements set out in the list (regulation 4);
- (c) applies certain provisions of the Food Safety (Northern Ireland) Order 1991 (1991 N.I. 7) to the Regulations with modifications. This includes the application (with modifications) of —
 - (i) Article 8, enabling an authorised officer, if it appears to that officer that Article 6(2) of Regulation (EU) 2015/2283 is being or has been contravened, to give notice to the person in charge of the food that it is not to be used for human consumption or is not to be removed except to some place specified in the notice, or to seize the food in order to have it dealt with by a justice of the peace (regulation 5(2) and Schedule 2), and
 - (ii) Article 9(1), enabling an improvement notice to be served requiring compliance with the provisions of Regulation (EU) 2015/2283 specified in Schedule 1 to these Regulations. The provisions as applied, make the failure to comply with an improvement notice an offence (regulation 5(1) and Schedule 2);
- (d) revoke and replace the Novel Foods and Novel Foods Ingredients Regulations (Northern Ireland) 2004 and the Food Enzymes Regulations (Northern Ireland) 2009.

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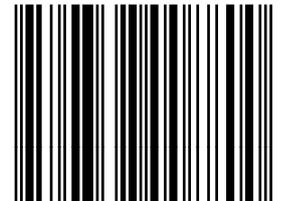
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