2004 No. 515

FOOD

The Food with Added Phytosterols or Phytostanols (Labelling) Regulations (Northern Ireland) 2004

Made - - - - - 17th December 2004

Coming into operation 12th January 2005

The Department of Health, Social Services and Public Safety(**a**), in exercise of the powers conferred on it by Articles 15(1)(e) and (f), 16, 25(1) and (3), 26(3) and 47(2) of the Food Safety (Northern Ireland) Order 1991(**b**) and of all other powers enabling it in that behalf, having had regard, in accordance with Article 47(3A) of the said Order, to relevant advice given by the Food Standards Agency and after consultation both as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council(**c**) 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 and in accordance with Article 47(3) and (3B) of the said Order, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as The Food with Added Phytosterols or Phytostanols (Labelling) Regulations (Northern Ireland) 2004, and shall come into operation on 12th January 2005.

Interpretation

2.—(1) In these Regulations –

"biscuits" includes wafers, rusks, oatcakes and matzos;

"confectionery product" means any item of chocolate confectionery or sugar confectionery;

"Directive 2000/13" means Directive 2000/13/EC of the European Parliament and of the Council(**d**) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, as amended by amendments up to and including those effected by Directive 2003/89/EC of the European Parliament and of the Council(**e**);

"edible ice" includes ice-cream, water ice and fruit ice, whether alone or in combination, and any similar food;

"fancy confectionery product" means any confectionery product in the form of a figure, animal, cigarette or egg or in any other fancy form;

(**a**) Formerly the Department of Health and Social Services *see* S.I. 1999/283 (N.I.) Article 3
(**b**) S.I. 1991/762 (N.I. 7) as amended by S.I. 1996/1663 (N.I. 12) and paragraphs 26 to 42 of Schedule 5 & Schedule 6 to the Food Standards Act 1999 c. 28
(**c**) O.J. No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L245, 29.9.2003, p. 4)
(**d**) O.J. No. L109, 6.5.2000, p. 29, as corrected by a Corrigendum (O.J. No. L124, 25.5.2000, p. 66)
(**e**) O.J. No. L308, 25.11.2003, p. 15

"flour confectionery" means any cooked food which is ready for consumption without further preparation (other than reheating), of which a characterising ingredient is ground cereal, including shortbread, sponges, crumpets, muffins, macaroons, ratafias, pastry and pastry cases, and also includes meringues, petits fours and uncooked pastry and pastry cases, but does not include bread, pizzas, biscuits, crispbread, extruded flat bread or any food containing a filling which has as an ingredient any cheese, meat, offal, fish, shellfish, vegetable protein material or microbial protein material;

"the key particulars" means those particulars specified in items 1 and 5 in the second paragraph of Article 2 of Regulation 608/2004;

"the Order" means the Food Safety (Northern Ireland) Order 1991;

"prepacked for direct sale" means –

(a) in relation to a food other than flour confectionery, bread and edible ices, prepacked by a retailer for sale by him on the premises where the food is packed or from a vehicle or stall used by him, and

(b) in relation to flour confectionery, bread and edible ices, prepacked by a retailer for sale as in paragraph (a), or prepacked by the producer of the food for sale by him either on the premises where the food is produced or on other premises from which he conducts business under the same name as the business conducted on the premises where the food is produced;

"preparation", in relation to food, includes manufacture and any form of processing or treatment;

"Regulation 608/2004" means Commission Regulation (EC) No. 608/2004(**a**) concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phyostanols and/or phytostanol esters;

"sell" includes possession for sale and offer, expose or advertise for sale, and "sale" shall be construed accordingly;

"the specified particulars" means the particulars required by Article 2 of Regulation 608/2004.

(2) Food shall be regarded as prepacked for the purposes of these Regulations if –

(a) it is ready for sale to the ultimate consumer or to a mass caterer, and

(b) it is –

(i) put into packaging before being offered for sale in such a way that the food, whether wholly or only partly enclosed, cannot be altered without opening or changing the packaging, or

(ii) wholly enclosed in packaging before being offered for sale and the food is intended to be cooked without opening the packaging,

but food shall not be regarded as prepacked for the purposes of these Regulations if it comprises an individually wrapped sweet or chocolate which is not enclosed in any further packaging and which is not intended for sale as an individual item.

(3) Other expressions used both in these Regulations and in Directive 2000/13 have the same meaning in these Regulations as they have in that Directive.

Offences and penalty

3. Subject to regulation 4, if any person –

(a) sells any food in respect of which the labelling requirements of Regulation 608/2004 apply and which is not labelled with the specified particulars, or

(b) sells any food which is not labelled in accordance with regulation 5, 6 or 7,

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(**a**) O.J. No. L97, 1.4.2004, p. 44

Exemption

4. In the case of –

(a) food which is not prepacked,

(b) food which is prepacked for direct sale or

(c) individually wrapped fancy confectionery products which are not enclosed in any further packaging and which are intended for sale as single items,

such food need not be labelled with any of the specified particulars other than the key particulars.

Manner of labelling: general requirement

5. When any food other than food to which regulation 6 applies is sold, any particulars with which it is required to be labelled by Regulation 608/2004 shall appear –

(a) on the packaging,

(b) on a label attached to the packaging, or

(c) on a label which is clearly visible through the packaging,

save that, where the sale is otherwise than to the ultimate consumer, such particulars may, alternatively, appear only on the commercial documents relating to the food where it can be guaranteed that such documents, containing all such particulars, either accompany the food to which they relate or were sent before, or at the same time as, delivery of the food.

Manner of labelling: special rules

6.—(1) This regulation applies to –

(a) food which is not prepacked;

(b) food which is prepacked for direct sale; and

(c) any individually wrapped fancy confectionery product which is not enclosed in any further packaging and which is intended for sale as a single item.

(2) When any food to which this regulation applies is sold to the ultimate consumer, the key particulars with which that food is required to be labelled by Regulation 608/2004 as read with regulation 4 shall appear –

(a) on a label attached to the food, or

(b) on a menu, notice, ticket or label which is readily discernible by an intending purchaser at the place where he chooses that food.

(3) When any food to which this regulation applies is sold otherwise than to the ultimate consumer, the key particulars with which that food is required to be labelled by Regulation 608/2004 as read with regulation 4 shall appear –

(a) on a label attached to the food, or

(b) on a ticket or notice which is readily discernible by the intending purchaser at the place where he chooses the food, or

(c) in commercial documents relating to the food where it can be guaranteed that such documents either accompany the food to which they relate or were sent before, or at the same time as, delivery of the food.

Intelligibility of labelling

7.—(1) The particulars with which a food is required to be labelled as referred to in regulations 5 and 6, or which appear on a menu, notice, ticket or label pursuant to regulation 6, shall be easy to understand, clearly legible and indelible and, when a food is sold to the ultimate consumer, the said particulars shall be marked in a conspicuous place in such a way as to be easily visible.

(2) Such particulars shall not in any way be hidden, obscured or interrupted by any other written or pictorial matter.

(3) Paragraph (1) shall not be taken to preclude the giving of such particulars at mass caterers, in respect of foods the variety and type of which are changed regularly, by means of temporary media (including the use of chalk on a blackboard).

Enforcement

8. Each district council shall enforce and execute these Regulations within its district.

Defence in relation to exports

9. In any proceedings for an offence under these Regulations, it shall be a defence for the person charged to prove that the food in respect of which the offence is alleged to have been committed –

(a) was intended for export to a country, other than a Member State, which has legislation analogous to Regulation 608/2004 and that the food complies with that legislation; or

(b) was intended for export to a Member State, is food to which Regulation 608/2004 applies and the food complies with the provisions of that Regulation as read with Directive 2000/13 as applied in that state.

Application of various provisions of the Order

10.—(1) The following provisions of the Order shall apply for the purposes of these Regulations and any reference in them to the Order shall be construed as a reference to these Regulations –

(a) Article 2 (3) and (4) (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 7, 13 or 14 of the Order;

(e) Article 30(8) (which relates to documentary evidence);

(f) Article 36 (punishment of offences) in so far as it relates to offences under Article 34(1) and (2) as applied by paragraph (3);

(2) In the application of Article 33 of the Order (powers of entry) for the purposes of these Regulations, the reference in paragraph (1)(a) shall be construed as including references to Regulation 608/2004.

(3) The following provisions of the Order shall apply for the purposes of these Regulations and any reference in them to the Order shall be construed as including a reference to these Regulations as read with Regulation 608/2004 –

(a) Article 34 (1) (obstruction etc. of officers);

(b) Article 34(2), with the modification that the reference to "any such requirement as is mentioned in paragraph 1(b) above" shall be deemed to be a reference to any such requirement as is mentioned in that paragraph as applied by sub-paragraph (b) above.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 17th December 2004.

(L.S.) *David Bingham*

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

EXPLANATORY NOTE

(This note is not part of the Regulations.)

1. These Regulations, provide for the enforcement of Commission Regulation (EC) No. 608/2004 (O.J. No. L97, 1.4.2004, p. 44) concerning the labelling of foods and food ingredients with added phytosterols, phytosterol esters, phytostanols and/or phytostanol esters. That Regulation requires such foods and food ingredients to be labelled with additional information, including the words "with added plant sterols/plant stanols".

2. Regulation 608/2004 was made pursuant to Directive 2000/13/EC of the European Parliament and of the Council (O.J. No. L109, 6.5.2000, p. 29) on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs ("the Directive"). In consequence, the products covered by Regulation 608/2004 are foods and food ingredients which are to be delivered as such to the ultimate consumer or which are intended for supply to mass caterers. By virtue of Article 13(4) of the Directive, certain small packages and indelibly marked bottles are exempt from the labelling requirements of regulation 608/2004. There is a transitional provision in Article 3 of that Regulation.

3. Pursuant to Articles 14 and 15 of the Directive, these Regulations contain an exemption from the need to be labelled with some of the particulars required by Regulation 608/2004 in the case of food which is not prepacked, certain similar foods and fancy confectionery products (regulation 4).

4. Pursuant to Articles 13(1) and (2) and 14 of the Directive, these Regulations make provision as to the manner of labelling in the case of the required particulars (regulations 5 to 7).

5. These Regulations also –

(a) create offences and prescribe a penalty (regulation 3) and specify enforcement authorities (regulation 8);

(b) provide a defence in relation to exports, in accordance with Articles 2 and 3 of Council Directive 89/397/EEC (O.J. No. L186, 30.6.89, p. 23) on the official control of foodstuffs, as read with the ninth recital to that Directive (regulation 9);

(c) incorporate specified provisions of the Food Safety (Northern Ireland) Order 1991 (regulation 10).

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