

**2013 No. 229**

**FOOD**

**The Contaminants in Food Regulations (Northern Ireland) 2013**

*Made* - - - - 23rd September 2013

*Coming into operation* - 31st October 2013

The Department of Health, Social Services and Public Safety<sup>(a)</sup> makes the following Regulations in exercise of the powers conferred by Articles 15(1), 16(1) and (2), 25(1)(a) and 3, 26(3) and 47(2) of the Food Safety (Northern Ireland) Order 1991<sup>(b)</sup>, as read with paragraph 1A of Schedule 2 to the European Communities Act 1972<sup>(c)</sup>.

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 references to an Article of or Annex to the EU instruments specified in regulation 2(3) to be construed as references to that Article or Annex as it may be amended from time to time.

In accordance with Article 47(3A) of that Order, it 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<sup>(d)</sup>, 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) and amended by Part 1 of Schedule 1 to the European Union (Amendment) Act 2008 (2008 c.7)  
(d) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Commission Regulation (EC) No. 596/2009 of the European Parliament and of the Council adopting 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: Adoption to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p14)

# PART 1

## Introductory

### Citation and commencement

1. These Regulations may be cited as the Contaminants in Food Regulations (Northern Ireland) 2013 and come into operation on 31st October 2013.

### Interpretation

2.—(1) In these Regulations —

“Directive 76/621” means Council Directive 76/621/EEC relating to the fixing of the maximum level of erucic acid in oils and fats intended as such for human consumption and in foodstuffs containing added oils or fats(a);

“Directive 80/891” means Commission Directive 80/891/EEC relating to the Community method of analysis for determining the erucic acid content in oils and fats intended to be used as such for human consumption and in foodstuffs containing added oils or fats(b);

“Regulation 1881/2006” means Commission Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs(c);

“Regulation 629/2008” means Commission Regulation (EC) No. 629/2008 amending Regulation (EC) No 1881/2006 setting maximum levels for certain contaminants in foodstuffs(d);

“Regulation 124/2009” means Commission Regulation (EC) No. 124/2009 setting maximum levels for the presence of coccidiostats or histomonostats in food resulting from the unavoidable carry-over of these substances in non-target feed(e);

“Regulation 165/2010” means Commission Regulation (EU) No. 165/2010 amending Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs as regards aflatoxins(f); and

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

(2) Any other expression used in these Regulations and in Directive 76/621, Directive 80/891, Regulation 1881/2006 or Regulation 124/2009 has the same meaning in these Regulations as it bears in the Directive or Regulation concerned.

(3) Any reference to an EU instrument is a reference to it as amended at the date of making of these Regulations.

(4) Any reference to an Article of or Annex to Directive 76/621, Directive 80/891, Regulation 1881/2006 or Regulation 124/2009 is a reference to that Article or Annex as it may be amended from time to time.

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

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(a) OJ No. L202, 28.7.1976, p.35. This Directive was last amended by Council Regulation (EC) No. 807/2003 (OJ No. L122, 16.5.2003, p.36)

(b) OJ No. L254, , 27.9.1980, p.35

(c) OJ No. L364, 20.12.2006, p.5. This Regulation has been amended by Commission Regulations (EC) No’s 1126/2007 (OJ No. L255, 29.9.2007, p.14), 565/2008 (OJ No. L160, 19.6.2008, p.20), 629/2008 (OJ No. L173, 3.7.2008, p.6), and by Commission Regulations (EU) No’s 105/2010 (OJ No.L35, 6.2.2010, p.7), 165/2010 (OJ No. L50, 27.2.2010, p.8), 420/2011 (OJ No. L111, 30.4.2011, p.3), 835/2011 (OJ No. L215, 20.8.2011, p.4), 1258/2011 (OJ No. L320, 3.12.2011, p.15), 1259/2011 (OJ No. L320, 3.12.2011, p.18), 594/2012 (OJ No. L176, 6.7.2012, p.43) and 1058/2012 (OJ No. L313, 13.11.2012, p.14)

(d) OJ No. L173, 3.7.2008, p.6

(e) OJ No. L40, 11.2.2009, p.7. This Regulation has been amended by Commission Regulation (EU) No. 610/2012 (OJ No. L178, 10.7.2012, p.1)

(f) OJ No. L50, 27.2.2010, p.8

(g) 1954 c.33

## PART 2

### Erucic acid in food

#### Scope

3.—(1) This Part applies to —

- (a) oils, fats and mixtures of the two which are intended as such for human consumption;
- (b) compound foodstuffs described directly or by implication as specially prepared for infants and young children, to which oils, fats or mixtures of the two have been added; and
- (c) compound foodstuffs other than those described directly or by implication as specially prepared for infants and young children, to which oils, fats or mixtures of the two have been added and the overall fat content of which exceeds 5%.

(2) In paragraph (1) the expressions “infants” and “young children” have the meanings given to them in Article 2 of Commission Directive 2006/141/EC on infant formulae and follow-on formulae and amending Directive 1999/21/EC(a).

#### Controls on erucic acid

4.—(1) A person may not place on the market, for consumption by the final consumer, a product to which this Part applies in which the level of erucic acid exceeds 5%, calculated on the total level of fatty acids in the fat component.

(2) The level of erucic acid in a food is to be determined according to the methods of screening and analysis prescribed in Article 2 of and the Annex to Directive 80/891.

(3) Any person who contravenes paragraph (1) is guilty of an offence.

(4) In paragraph (1) “final consumer” means the ultimate consumer of a foodstuff who will not use the food as part of any food business operation or activity.

## PART 3

### Contaminants in food

#### Controls on contaminants in food

5.—(1) Subject to the transitional arrangements contained in –

- (a) Article 11 of Regulation 1881/2006;
- (b) Article 2 of Regulation 629/2008; or
- (c) Article 2 of Regulation 165/2010,

a person who contravenes or fails to comply with any of the EU provisions specified in paragraph (2) is guilty of an offence.

(2) The EU provisions are —

- (a) Article 1(1) of Regulation 1881/2006 (prohibition on the placing on the market of foodstuffs containing contaminants in excess of prescribed limits contained in the Annex), as read with—
  - (i) Article 1(2) (maximum levels applying to edible part of food unless otherwise specified in the Annex),
  - (ii) Article 2 (provisions relating to the application of maximum levels to dried, diluted, processed and compound foodstuffs),

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(a) OJ No. L401, 30.12.2006, p. 1, last amended by Commission Directive 2013/26/EU (OJ No. L158, 10.6.2013, p.376)

- (iii) Article 4 (specific provisions for groundnuts, other oilseeds, tree nuts, dried fruit, rice and maize),
- (iv) Article 6 (specific provisions for lettuce) and
- (v) the Annex (maximum levels for certain contaminants in foodstuffs);
- (b) Article 3 of Regulation 1881/2006 (prohibitions on use, mixing and detoxification);
- (c) Article 5 of Regulation 1881/2006 (specific labelling requirements for groundnuts, other oilseeds, derived products thereof and cereals); and
- (d) Article 1(1) of Regulation 124/2009 (prohibitions on marketing or mixing foods containing coccidiostats or histomonstats at levels in excess of prescribed limits), as read with Article 1(2).

## PART 4

### Administration and enforcement

#### **Penalties**

6. Anyone convicted of an offence under regulation 4(3) or regulation 5(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **Enforcement and competent authorities**

7.—(1) It is the duty of each district council within its district to execute and enforce —

- (a) these regulations;
- (b) Commission Regulation 1881/2006; and
- (c) Commission Regulation 124/2009, save for the requirement in paragraph 2 of Article 1(1) of that Regulation (requirement to investigate the reasons for a finding of a significant residue level below the maximum).

(2) The competent authority for the purposes of Article 2(2) of Commission Regulation 1881/2006 (justification by food business operators of concentration or dilution factors) is the district council having the duty to enforce under paragraph (1).

(3) The competent authority for the purposes of paragraph 2 of Article 1(1) of Commission Regulation 124/2009 (requirement to investigate the reasons for a finding of a significant residue level below the maximum) is the Department of Agriculture and Rural Development.

(4) It is the duty of the Department of Agriculture and Rural Development to execute and enforce paragraph 2 of Article 1(1) of Commission Regulation 124/2009 (requirement to investigate the reasons for a finding of a significant residue level below the maximum).

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

8.—(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 of it is to 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) with the modification that—
  - (i) paragraphs (2) to (4) apply in relation to an offence under regulation 4(3) or 5(1) as they apply in relation to an offence under Article 13 or 14, and
  - (ii) in paragraph (4) the references to “sale” are deemed to include references to “placing on the market”;
- (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 sub-paragraph (e);
- (g) Article 36(1) (punishment of offences), in so far as it relates to offences under Article 34(1) as applied by sub-paragraph (e); and
- (h) Article 36(2) and (3), in so far as it relates to offences under Article 34(2) as applied by sub-paragraph (f).

(2) Subject to paragraph (3), Article 8 of the Order (inspection and seizure of suspected food) applies for the purposes of these Regulations as if it read as follows —

“8.—(1) An authorised officer may at all reasonable times inspect any food intended for human consumption which has been placed on the market and paragraphs (2) to (7) shall apply where, on such an inspection, it appears to the authorised officer that the placing on the market of any food fails to comply with the requirements specified in regulation 4(1) or 5(2) of the Contaminants in Food Regulations (Northern Ireland) 2013 (“the EU requirements”).

(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 or any specified portion of it —
  - (i) is not to be used for human consumption, and
  - (ii) either is not to be removed or is to be removed to a place at which there are facilities to carry out sampling in the manner required by law; or
- (b) seize the food and remove it in order to have it dealt with by a justice of the peace.

(3) Where the authorised officer gives notice under paragraph (2)(a), that officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not the food complies with the EU requirements and —

- (a) if satisfied that it does comply, shall forthwith withdraw the notice;
- (b) if not so satisfied, shall 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 officer shall inform the person in charge of the food of the intention to have it dealt with by a justice of the peace and —

- (a) any person who in connection with any of the EU requirements might be liable to a prosecution in respect of the food shall, if that person attends before the justice of the peace by whom the food falls to be dealt with, be entitled to be heard and to call witnesses; and
- (b) that justice of the peace may, but need not, be a member of the court before which any person is proceeded against for an offence in connection with any of the EU requirements in relation to that food.

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

- (a) the food to be destroyed or to be so 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 or, as the case may be, the Department of Agriculture and Rural Development, 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) Any person who knowingly contravenes the requirements of a notice under paragraph (2)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

### **Consequential amendment**

**9.** In the Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013(**a**), in Schedule 1 (provisions to which those Regulations do not apply) for “The Contaminants in Food Regulations (Northern Ireland) 2010”(b) in column 1 substitute “The Contaminants in Food Regulations (Northern Ireland) 2013” and in column 2 for the reference “S.R. 2010 No. 335” substitute the reference to these regulations.

### **Revocations**

**10.** The following Regulations are revoked —

- (a) The Mineral Hydrocarbons in Food Regulations (Northern Ireland) 1966(c);
- (b) The Erucic Acid in Food Regulations (Northern Ireland) 1977(d);
- (c) The Erucic Acid in Food (Amendment) Regulations (Northern Ireland) 1982(e); and
- (d) The Contaminants in Food Regulations (Northern Ireland) 2010.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 23rd September 2013.



*Andrew McCormick*

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

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(a) S.R. 2013 No. 66  
(b) S.R. 2010 No. 335  
(c) S.R. 1966 No. 200  
(d) S.R. 1977 No. 135  
(e) S.R. 1982 No. 184

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations revoke and re-enact with changes the Contaminants in Food Regulations (Northern Ireland) 2010 (S.R. 2010 No. 335). They make provision for—

- (a) the continuing implementation of Council Directive 76/621/EEC relating to the fixing of the maximum level of erucic acid in oils and fats intended as such for human consumption and in foodstuffs containing added oils or fats (OJ No. L202, 28.7.1976, p.35) and of Commission Directive 80/891/EEC relating to the Community method of analysis for determining the erucic acid content in oils and fats intended to be used as such for human consumption and foodstuffs containing added oils or fats (OJ No. L254, 29.9.1980, p.35); and
- (b) the continuing execution and enforcement of Commission Regulation (EC) No. 1881/2006 setting maximum levels for contaminants in foodstuffs (OJ No. L364, 20.12.2006, p.5) (“the Commission Regulation”).

The Commission Regulation has been amended by —

- (a) Commission Regulation (EC) No. 1126/2007 (OJ No. L255, 29.9.2007, p.14), which concerns maximum permitted levels for *Fusarium* toxins in maize and maize products;
- (b) Commission Regulation (EC) No. 565/2008 (OJ No. L160, 19.6.2008, p.20), which concerns the establishment of a maximum level for dioxins and PCBs in fish liver;
- (c) Commission Regulation (EC) No. 629/2008 (OJ No. L173, 3.7.2008, p.6), which concerns maximum permitted levels for certain heavy metals;
- (d) Commission Regulation (EU) No. 105/2010 (OJ No. L35, 6.2.2010, p.7), which concerns maximum permitted levels for ochratoxin A;
- (e) Commission Regulation (EU) No. 165/2010 (OJ No. L50, 27.2.2010, p.8), which concerns maximum levels for aflatoxins and the treatment of certain foods found to contain aflatoxins in excess of those levels;
- (f) Commission Regulation (EU) No. 420/2011 (OJ No. L111, 30.4.2011, p.3), which concerns the collection of occurrence data by Member States;
- (g) Commission Regulation (EU) No. 835/2011 (OJ No. L215, 20.8.2011, p.4), which concerns maximum levels for polycyclic aromatic hydrocarbons;
- (h) Commission Regulation (EU) No.1258/2011 (OJ No. L320, 3.12.2011, p.15), which concerns revised limits for nitrates in leafy vegetables;
- (i) Commission Regulation (EU) No.1259/2011 (OJ No. L320, 3.12.2011, p.18), which concerns maximum permitted levels for dioxins, dioxin-like PCBs and non dioxin-like PCBs;
- (j) Commission Regulation (EU) No. 594/2012 (OJ No. L176, 6.7.2012, p. 43) concerning maximum permitted levels of ochratoxin A, non dioxin-like PCBs and melamine in foodstuffs; and
- (k) Commission Regulation (EU) No. 1058/2012 (OJ No. L 313, 13.11.2012, p.14), which concerns maximum permitted levels for aflatoxins in dried figs.

These Regulations also provide for the execution and enforcement of Commission Regulation (EC) No. 124/2009 (OJ No. L40, 11.2.2009, p.7) (“Regulation 124/2009”), which concerns maximum permitted levels for certain feed additives that may, in specified circumstances, occur in food. This Regulation has been amended by Commission Regulation (EU) No. 610/2012 (OJ No. L178, 10.7.2012, p.1).

The Regulations provide that it is an offence to place specified foods on the market containing erucic acid in excess of permitted levels (*regulations 3 and 4*);

The Regulations also provide that it is an offence, (except in certain cases relating to food placed on the market before a date specified in the relevant EU legislation) —

- (a) to place on the market certain foods if they contain contaminants of any kind specified in the Commission Regulation or in Regulation 124/2009 at levels exceeding those specified;
- (b) to use food containing contaminants at levels in excess of those permitted by the Commission Regulation as ingredients in the production of certain foods;
- (c) to mix foods that do not comply with the maximum levels prescribed by the Commission Regulation or Regulation 124/2009 with foods which do comply;
- (d) to mix foods to which the Commission Regulation relates and which are intended for direct consumption or as food ingredients with foods to which the Commission Regulation relates and which are intended to be sorted or otherwise treated prior to consumption;
- (e) to detoxify by chemical treatment food containing mycotoxins in excess of the limits specified in the Commission Regulation;
- (f) to fail to observe particular labelling requirements for certain groundnuts, other oilseeds, derived products thereof and cereals; and
- (g) to place on the market certain foods containing specified coccidiostats and histomonstats in excess of prescribed limits (*regulation 5*).

These Regulations additionally —

- (a) provide for penalties on conviction for an offence under these Regulations (*regulation 6*) and specify the enforcement and competent authorities (*regulation 7*);
- (b) provide for the application of specified provisions of the Food Safety (Northern Ireland) Order 1991 for the purposes of these Regulations (*regulation 8*);
- (c) make a consequential amendment to the Food Safety (Sampling and Qualifications) Regulations (Northern Ireland) 2013 (*regulation 9*), the effect being to disapply the sampling and analysis provisions of those Regulations only to the extent that those matters are regulated by the EU instruments mentioned in paragraphs (a) to (d) below.

The Commission Regulation specifies the European Union methods of sampling and analysis that are required to be used for the official control of levels of the substances covered by it. Those methods are set out in —

- (a) Commission Regulation (EC) No. 401/2006 laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs (OJ No. L70, 9.3.2006, p.12), as amended by Commission Regulation (EU) No 178/2010 (OJ No. L52, 3.3.2010, p.32);
- (b) Commission Regulation (EC) No. 1882/2006 laying down methods of sampling and analysis for the official control of levels of nitrates in certain foodstuffs (OJ No. L364, 20.12.2006, p.25);
- (c) Commission Regulation (EC) No.333/2007 laying down the methods of sampling and analysis for the official control of the levels of lead, cadmium, mercury, inorganic tin, 3-MCPD and benzo(a)pyrene in foodstuffs (OJ No. L88, 29.3.2007, p29), as amended by Commission Regulation (EU) No. 836/2011 (OJ No. L215, 20.8.2011, p.9); and
- (d) Commission Regulation (EU) No. 252/2012 laying down methods of sampling and analysis for the official control of levels of dioxins, dioxin-like PCBs and non-dioxin-like PCBs in certain foodstuffs and repealing Regulation (EC) No 1883/2006 (OJ No. L84, 23.3.2012, p.1).









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STATUTORY RULES OF NORTHERN IRELAND

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