Changes to legislation: *The Contaminants in Food (Scotland) Regulations 2004 is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCOTTISH STATUTORY INSTRUMENTS

2004 No. 525

FOOD

The Contaminants in Food (Scotland) Regulations 2004

Made - - - -	*2nd December 2004*
Laid before the Scottish Parliament - - - -	*2nd December 2004*
Coming into force - -	*25th December 2004*

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(a), (e) and (f), 17(1) and (2), 26(1)(a), (2)(e) and (3) and 48(1) of the Food Safety Act 1990 [M1], and all other powers enabling them in that behalf, having had regard, in accordance with section 48(4A) [M2] of that Act, to relevant advice given by the Food Standards Agency, and after consultation in accordance with section 48(4) and (4B) [M3] of that Act, hereby make the following Regulations:

Marginal Citations

M1 1990 c. 16; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c. 40), **Schedule 9**, paragraph 6 and by the Food Standards Act 1999 (c. 28) ("the 1999 Act"), Schedule 5, paragraph 10(3); sections 16(1) and 48(1) were amended by the 1999 Act, Schedule 5, paragraph 8; section 17(1) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, Schedule 6; amendments made by Schedule 5 of the 1999 Act shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c. 46) ("the 1998 Act") by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

M2 Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

M3 Section 48(4B) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Contaminants in Food (Scotland) Regulations 2004 and shall come into force on 25th December 2004.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Food Safety Act 1990;

"authorised lettuce" means lettuce of the kind specified in point 1.3 or in point 1.4 of section 1 of Annex I to the Commission Regulation, which is grown in the United Kingdom in accordance with the proviso to Article 3.1 of the Commission Regulation and is intended for human consumption there;

"authorised spinach" means spinach of the kind specified in point 1.1 of section 1 of Annex I to the Commission Regulation, which is grown in the United Kingdom in accordance with the proviso to Article 3.1 of the Commission Regulation and is intended for human consumption there;

"the Commission Regulation" means Commission Regulation (EC) No. 466/2001[M4] setting maximum levels for certain contaminants in foodstuffs as corrected by a corrigendum published on 30th November 2001 [M5] and as amended by Council Regulation (EC) No. 2375/2001[M6], Commission Regulation (EC) No. 221/2002[M7], Commission Regulation (EC) No. 257/2002[M8], Commission Regulation (EC) No. 472/2002[M9] as corrected by a corrigendum published on 23rd March 2002 [M10], Commission Regulation (EC) No. 563/2002[M11] as corrected by a corrigendum published on 14th June 2002 [M12], Commission Regulation (EC) No. 1425/2003[M13], Commission Regulation (EC) No. 2174/2003[M14], Commission Regulation (EC) No. 242/2004[M15], Commission Regulation (EC) No. 455/2004[M16] and Commission Regulation (EC) No. 684/2004[M17];

"the Community Regulation" means Regulation (EC) No. 178/2002[M18] 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, as amended by Regulation (EC) No. 1642/2003[M19];

"Directive 85/591/EEC" means Council Directive 85/591/EEC concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption [M20];

"Directive 93/99/EEC" means Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs [M21];

"Directive 98/53/EC" means Commission Directive 98/53/EC laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs [M22] as amended by Commission Directive 2002/27/EC[M23], Commission Directive 2003/121/EC[M24] and Commission Directive 2004/43/EC[M25];

"Directive 2001/22/EC" means Commission Directive 2001/22/EC laying down the sampling methods and the methods of analysis for the official control of the levels of lead, cadmium, mercury and 3–MCPD in foodstuffs [M26] as corrected by Commission Decision 2001/873/EC[M27];

"Directive 2002/26/EC" means Commission Directive 2002/26/EC laying down the sampling methods and the methods of analysis for the official control of the levels of ochratoxin A in foodstuffs [M28] as amended by Commission Directive 2004/43/EC;

"Directive 2002/69/EC" means Commission Directive 2002/69/EC laying down the sampling methods and the methods of analysis for the official control of dioxins and the determination of dioxin–like PCBs in foodstuffs [M29] as corrected by a corrigendum published on 20th September 2002 [M30] and as amended by Commission Directive 2004/44/EC[M31];

"Directive 2003/78/EC" means Commission Directive 2003/78/EC laying down the sampling methods and the methods of analysis for the official control of the levels of patulin in foodstuffs [M32]; and

"Directive 2004/16/EC" means Commission Directive 2004/16/EC laying down the sampling methods and the methods of analysis for the official control of the levels of tin in canned foods [M33].

(2) Other expressions used in these Regulations and in the Commission Regulation have the same meaning as in the Commission Regulation.

Marginal Citations

M4 O.J. No. L 77, 16.3.01, p.1.
M5 O.J. No. L 313, 30.11.01, p.60.
M6 O.J. No. L 321, 6.12.01, p.1.
M7 O.J. No. L 37, 7.2.02, p.4.
M8 O.J. No. L 41, 13.2.02, p.12.
M9 O.J. No. L 75, 16.3.02, p.18.
M10 O.J. No. L 80, 23.3.02, p.42.
M11 O.J. No. L 86, 3.4.02, p.5.
M12 O.J. No. L 155, 14.6.02, p.63.
M13 O.J. No. L 203, 12.8.03, p.1.
M14 O.J. No. L 326, 13.12.03, p.12.
M15 O.J. No. L 42, 13.2.04, p.3.
M16 O.J. No. L 74, 12.3.04, p.11.
M17 O.J. No. L 106, 15.4.04, p.6.
M18 O.J. No. L 31, 1.2.02, p.1.
M19 O.J. No. L 245, 29.9.03, p.4.
M20 O.J. No. L 372, 31.12.85, p.50.
M21 O.J. No. L 290, 24.11.93, p.14.
M22 O.J. No. L 201, 17.7.98, p.93.
M23 O.J. No. L 75, 16.3.02, p.44.
M24 O.J. No. L 332, 19.12.03, p.38.
M25 O.J. No. L 113, 20.4.04, p.14.
M26 O.J. No. L 77, 16.3.01, p.14.
M27 O.J. No. L 325, 8.12.01, p.34.
M28 O.J. No. L 75, 16.3.02, p.38.
M29 O.J. No. L 209, 6.8.02, p.5.
M30 O.J. No. L 252, 20.9.02, p.40.
M31 O.J. No. L 113, 20.4.04, p.17.
M32 O.J. No. L 203, 12.8.03, p.40.
M33 O.J. No. L 42, 13.2.04, p.16.

Offences and penalties

3. Subject to regulations 6, 10 and 11, a person shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale if–

(a) before 1st January 2005–

(i) that person places on the market any food (other than authorised spinach or authorised lettuce) which is covered by, but fails to meet the requirements of, Article 1.1, 2.1, 2.2 or 4.1 of the Commission Regulation, as read with Articles 1.2 and 4.3 of the Commission Regulation; or

(ii) that person contravenes Article 2.3, 4.2 or 4a of the Commission Regulation;

(b) on or after 1st January 2005–

(i) that person places on the market any food (other than authorised spinach) which is covered by, but fails to meet the requirements of, Article 1.1, 2.1, 2.2 or 4.1 of the Commission Regulation, as read with Articles 1.2 and 4.3 of the Commission Regulation; or

(ii) that person contravenes Article 2.3, 4.2 or 4a of the Commission Regulation.

Enforcement

4. Each food authority shall enforce and execute these Regulations within its area.

Sampling, analysis and modification of section 29 of the Act

5.—(1) In its application to the taking of a sample of any food specified in Sections 1 to 6 of Annex I to the Commission Regulation, section 29 of the Act shall be modified so as to require the power to take samples under subsection (b) and (d) of that section to be exercised in accordance with the methods of taking samples described or referred to–

(a) (subject to the requirement in relation to lettuce of the kind specified in point 1.3 or 1.4 of section 1 of Annex 1 to the Commission Regulation specified in column 3 of that Section) in the Annex to Commission Directive 2002/63/EC establishing Community methods of sampling for the official control of pesticide residues in and on products of plant and animal origin and repealing Directive 79/700/EC[M34], where the food concerned is of a description specified in Section 1 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of the Commission Regulation;

(b) in Annex I to Directive 98/53/EC, where the food concerned is of a description specified in Section 2 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of the Commission Regulation;

(c) in Annex I to Directive 2001/22/EC, where the food concerned is of a description specified in Section 3 or 4 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of the Commission Regulation;

(d) in Annex I to Directive 2002/26/EC, where the food concerned is of a description specified in Section 2 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of the Commission Regulation;

(e) in Annex I to Directive 2002/69/EC, where the food concerned is of a description specified in Section 5 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of the Commission Regulation;

(f) in Annex I to Directive 2003/78/EC, where the food concerned is of a description specified in Section 2 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of the Commission Regulation; and

(g) in Annex I to Directive 2004/16/EC, where the food concerned is of a description specified in Section 6 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of the Commission Regulation.

(2) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food to which paragraph (1)(b) applies, and that officer has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act, the person who analyses the sample shall ensure that–

(a) the sample is prepared in accordance with–

(i) paragraphs 1.1, 2 and 3 of Annex II to Directive 98/53/EC; and

(ii) in the case of whole nuts, paragraph 1.2 of that Annex;

(b) any analysis of the sample is carried out in accordance with methods of analysis which–

(i) so far as practicable comply with paragraphs 1 and 2 of the Annex to Directive 85/591/EEC; and

(ii) meet the criteria specified in paragraph 4.3 of Annex II to Directive 98/53/EC as read with the notes to that paragraph;

(c) any analysis of the sample is carried out by a laboratory which complies with Directive 93/99/EEC; and

(d) the reporting of the results of the analysis of the sample–

(i) makes use of the definitions in paragraph 4.1 of Annex II to Directive 98/53/EC; and

(ii) is in accordance with paragraph 4.4 of that Annex.

(3) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food to which paragraph (1)(c) applies, and that officer has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act, the person who analyses the sample shall ensure that–

(a) the sample is prepared in accordance with paragraphs 1 and 2 of Annex II to Directive 2001/22/EC as read, in the case of paragraph 2, with the note to that paragraph;

(b) any analysis of the sample is carried out in accordance with methods of analysis which–

(i) so far as practicable comply with paragraphs 1 and 2 of the Annex to Directive 85/591/EEC;

(ii) in the case of analysis for lead (other than in wine), mercury or cadmium, meet the criteria specified in paragraph 3.3.1 of Annex II to Directive 2001/22/EC;

(iii) in the case of analysis for lead in wine, comply with the second sub–paragraph of paragraph 3.2 of Annex II to Directive 2001/22/EC; and

(iv) in the case of analysis for 3–MCPD, meet the criteria specified in paragraph 3.3.2 of Annex II to Directive 2001/22/EC as read with the note to that paragraph;

(c) any analysis of the sample is carried out by a laboratory which complies with Directive 93/99/EEC;

(d) any analysis of the sample is carried out in such a way as to comply with the first and second sub–paragraphs of paragraph 3.4 of Annex II to Directive 2001/22/EC as read in the case of the second sub–paragraph with the note to that sub–paragraph; and

(e) the reporting of the results of the analysis of that sample–

(i) makes use of the definitions in paragraph 3.1 of Annex II to Directive 2001/22/EC as read with the note to that paragraph; and

(ii) is in accordance with the third sub–paragraph of paragraph 3.4 and with paragraph 3.6 of that Annex.

(4) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food to which paragraph (1)(d) applies, and that officer has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act, the person who analyses the sample shall ensure that–

(a) the sample is prepared in accordance with paragraphs 1 to 3 of Annex II to Directive 2002/26/EC;

(b) any analysis of the sample is carried out in accordance with methods of analysis which–

(i) comply with paragraphs 1 and 2 of the Annex to Directive 85/591/EEC; and

(ii) meet the criteria specified in paragraph 4.3 of Annex II to Directive 2002/26/EC as read with the notes to that paragraph;

(c) any analysis of the sample is carried out by a laboratory which complies with Directive 93/99/EEC; and

(d) the reporting of the results of the analysis of that sample–

(i) makes use of the definitions in paragraph 4.1 of Annex II to Directive 2002/26/EC; and

(ii) is in accordance with paragraph 4.4 of that Annex.

(5) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food to which paragraph (1)(e) applies, and that officer has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act, the person who analyses the sample shall ensure that–

(a) the sample is prepared in accordance with paragraph 3 of Annex II to Directive 2002/69/EC, as read with paragraphs 1 and 2 of that Annex;

(b) any analysis of the sample is carried out–

(i) in accordance with methods of analysis which meet the criteria specified in paragraphs 5, 6 and 7 of Annex II to Directive 2002/69/EC, as read with paragraphs 1 and 2 of that Annex; and

(ii) by a laboratory which complies with the requirements of paragraph 4 of Annex II to Directive 2002/69/EC; and

(c) the reporting of the results of the analysis of that sample is in accordance with paragraph 8 of Annex II to Directive 2002/69/EC.

(6) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food to which paragraph (1)(f) applies, and that officer has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act, the person who analyses the sample shall ensure that–

(a) the sample is prepared in accordance with paragraphs 1 to 3 of Annex II to Directive 2003/78/EC;

(b) any analysis of the sample is carried out in accordance with methods of analysis which–

(i) comply with paragraphs 1 and 2 of the Annex to Directive 85/591/EEC; and

(ii) meet the criteria specified in paragraph 4.3 of Annex II to Directive 2003/78/EC as read with the notes to that paragraph;

(c) any analysis of the sample is carried out by a laboratory which complies with Directive 93/99/EEC; and

(d) the reporting of the results of the analysis of that sample–

(i) makes use of the definitions in paragraph 4.1 of Annex II to Directive 2003/78 / EC; and

(ii) is in accordance with paragraph 4.4 of that Annex.

(7) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food to which paragraph (1)(g) applies, and that officer has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act, the person who analyses the sample shall ensure that–

(a) the sample is prepared in accordance with paragraphs 1, 2 and 3, and that section of paragraph 4.6 headed “Sample preparation”, of Annex II to Directive 2004/16/EC;

(b) any analysis of the sample is carried out in accordance with methods of analysis which–

(i) comply with paragraphs 1 and 2 of the Annex to Council Directive 85/891/EC; and

(ii) meet the criteria specified in paragraphs 4.3 and 4.3.1 of Annex II to Directive 2004/16/EC;

(c) any analysis of the sample is carried out by a laboratory which complies with Directive 93/99/EEC and that section of paragraph 4.6 of Annex II to Directive 2004/16/EC headed "Internal quality control"; and

(d) the reporting of the results of the analysis of that sample–

(i) makes use of the definitions in paragraph 4.1 of Annex II to Directive 2004/16/EC; and

(ii) is in accordance with paragraph 4.4 of that Annex.

Marginal Citations

M34 O.J. No. L 187, 16.7.02, p.30.

Defence in relation to exports

6. In any proceedings for an offence consisting of a contravention of regulation 3 it shall be a defence for the accused to prove that the food in respect of which the offence is alleged to have been committed was intended for export to a country other than a member State and that the food complies with the requirements of Article 12 of the Community Regulation.

Application of various sections of the Act

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

(a) section 3 (presumptions that food intended for human consumption);

(b) section 20 (offences due to fault of another person);

(c) section 21 (defence of due diligence), as it applies for the purposes of section 8, 14 or 15 of the Act;

(d) section 30(8) (which relates to documentary evidence);

(e) section 33 (obstruction etc. of officers);

(f) section 35(1) to (3) (punishment of offences), in so far as it relates to offences under section 33(1) and (2), as applied by sub–paragraph (e);

(g) section 36 (offences by bodies corporate);

(h) section 36A (offences by Scottish partnerships); and

(i) section 44 (protection of officers acting in good faith).

(2) Subject to paragraph (3), section 9 of the Act (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if it read as follows–

"**9.**—(1) An authorised officer of a food authority may at all reasonable times inspect any food intended for human consumption which–

(a) has been placed on the market; or

(b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of placing it on the market,

and subsections (2) to (8) shall apply where, on such an inspection, it appears to the authorised officer that the placing on the market of any food contravenes regulation 3(a)(i) or (b)(i) of the Contaminants in Food (Scotland) Regulations 2004 ("the Regulations").

(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 the sampling required by Directive 98/53/EC, Directive 2001/22/EC, Directive 2002/26/EC, Directive 2002/69/EC, Directive 2003/78/EC and Directive 2004/16/EC, as appropriate; or

(b) seize the food and remove it in order to have it dealt with by the sheriff.

(3) Where an authorised officer exercises the power conferred by subsection (2)(a), that officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not that officer is satisfied that the food complies with the requirements of regulation 3(a)(i) or (b)(i) of the Regulations, as appropriate and–

(a) if that officer is so satisfied, shall forthwith withdraw the notice;

(b) if that officer is not so satisfied, shall seize the food and remove it in order to have it dealt with by the sheriff.

(4) Where an authorised officer exercises the powers conferred by subsection (2)(b) or (3)(b), that officer shall inform the person in charge of the food of the intention to have it dealt with by the sheriff and any person who under regulation 3(a)(i) or (b)(i) of the Regulations might be liable to a prosecution in respect of the food shall, if that person attends before the sheriff by whom the food falls to be dealt with, be entitled to be heard and to call witnesses.

(5) If it appears to the sheriff, on the basis of such evidence as the sheriff considers appropriate in the circumstances, that any food falling to be dealt with under this section fails to comply with the requirements of regulation 3(a)(i) or (b)(i) of the Regulations the sheriff 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 subsection (2)(a) is withdrawn, or the sheriff by whom any food falls to be dealt with under this section refuses to condemn it, the food authority 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 subsection (6) above shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(8) Any person who knowingly contravenes the requirements of a notice under subsection (2)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale."

(3) The expressions "placing on the market", "Directive 98/53/EC", "Directive 2001/22/EC", "Directive 2002/26/EC", "Directive 2002/69/EC", "Directive 2003/78/EC" and "Directive 2004/16/EC" which are used in section 9 of the Act so far as it applies for the purposes of these Regulations by virtue of paragraph (2), shall, for those purposes, bear the meaning that those expressions respectively bear in these Regulations.

Re-export or destruction of food presented for import

8.—(1) Subject to regulation 9, if it appears to an authorised officer of a food authority that any food presented for import would, if placed on the market, contravene regulation 3(a)(i) or (b)(i) that officer may after appropriate consultation with a person appearing to be the importer of the food serve on that person a notice requiring–

(a) before 1st January 2005–

(i) the re-export of the food to a country other than a member State within such reasonable period as shall be specified in the notice; or

(ii) where such re-export would in the opinion of that officer involve serious risks to human health the destruction of the food within such reasonable period as shall be so specified;

(b) on or after 1st January 2005–

(i) where the requirements of Article 12 of the Community Regulation are satisfied the re-export of the food to a country other than a member State within such reasonable period as shall be specified in the notice; or

(ii) where the requirements of Article 12 of the Community Regulation are not satisfied the destruction of the food within such reasonable period as shall be so specified.

(2) Any notice served under paragraph (1) shall state–

(a) the right of appeal to the sheriff under paragraph (4); and

(b) the period within which such an appeal may be brought.

(3) The person appearing to be the importer of the food in respect of which a notice has been served under paragraph (1) shall ensure that it is stored until re-export or destruction under the supervision of the authorised officer at such places and under such conditions as the authorised officer may in the notice direct.

(4) Any person who is aggrieved by the decision of an authorised officer to serve a notice under paragraph (1) may appeal to the sheriff who may confirm or cancel the notice.

(5) The period within which such an appeal as is mentioned in paragraph (4) may be brought shall be 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and public holidays.

(6) Pending determination of an appeal under paragraph (4), paragraph (3) shall apply to the storage of the food concerned.

(7) If the sheriff allows an appeal brought under paragraph (4) the food authority shall compensate the owner of the food concerned for any depreciation in its value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under paragraph (7) shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(9) Any person who breaches the terms of a notice served under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

(10) The cost of re export, storage or destruction of the food under this regulation shall be borne by the importer.

Secondary treatment of food presented for import to which Article 4.3 applies

9.—(1) In relation to any food that is of the type referred to in Article 4.3(b) of the Commission Regulation that is presented for import and which appears to an authorised officer of a food authority

to contravene regulation 3(a)(i) or (b)(i) that authorised officer may, after appropriate consultation with a person appearing to be the importer of the food, serve on that person a notice requiring that person to–

(a) deal with the food only in compliance with Article 4.3(a), (c) and (d) of the Commission Regulation; and

(b) place the food on the market as soon as is reasonably practicable.

(2) The notice served under paragraph (1) shall state–

(a) the right of appeal to the sheriff under paragraph (3); and

(b) the period within which such an appeal may be brought.

(3) Any person who is aggrieved by the decision of an authorised officer to serve a notice under paragraph (1) may appeal to the sheriff, who may confirm or cancel the notice.

(4) The period within which such an appeal as is mentioned in paragraph (3) may be brought shall be 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and Public Holidays.

(5) Pending determination of an appeal under paragraph (3), the person appearing to be the importer of the food concerned shall–

(a) ensure that it is stored under the supervision of the authorised officer at such places and under such conditions as the authorised officer may direct; and

(b) bear the costs of such storage.

(6) If the sheriff allows an appeal brought under paragraph (3) the food authority shall compensate the owner of the food concerned 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 a single arbiter appointed, failing agreement between the parties, by the sheriff.

(8) Any person who fails to comply with any of the requirements specified in a notice served under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

Transitional provisions

10. Regulation 3(a)(i) and (b)(i) shall not apply in relation to any food–

(a) lawfully placed on the market in the European Community before 5th April 2002 which is covered by, but fails to meet the requirements of, Article 1.1, 2.1 or 2.2 of the Commission Regulation, as read with Article 1.2 of the Commission Regulation, to the extent that the failure consists in the food being placed on the market containing a contaminant specified in Section 3 or 4 of Annex I to the Commission Regulation at a level higher than that specified in relation to that food in the second column of the section concerned; or

(b) lawfully placed on the market in the European Community before 1st November 2003 which is covered by, but fails to meet the requirements of Article 1.1, 2.1 or 2.2 of the Commission Regulation, as read with Article 1.2 of the Commission Regulation, to the extent that the failure consists in the food being placed on the market containing patulin at a level higher than that specified in relation to that food in the second column of Section 2.3 of Annex I to the Commission Regulation.

11. Regulation 3(a)(ii) and (b)(ii) shall not apply in relation to any contravention of Article 2.3 of the Commission Regulation, to the extent that the contravention consists in the use as a food ingredient, for the production of a compound foodstuff, of

(a) food lawfully placed on the market in the European Community before 5th April 2002 and containing a contaminant specified in Section 3 or 4 of Annex I to the Commission Regulation at a level higher than that specified in relation to that food in the second column of the section concerned; or

(b) food lawfully placed on the market in the European Community before 1st November 2003 and containing patulin at a level higher than that specified in relation to that food in the second column of Section 2.3 of Annex I to the Commission Regulation.

Consequential amendment

12. In Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 1990 [M35] (provisions to which those Regulations do not apply) for the entry relating to the Contaminants in Food (Scotland) Regulations 2003 substitute–

> "The Contaminants in Food (Scotland) Regulations 2004 (S.S.I. 2004/525) (to the extent that a sample falls to be prepared and analysed in accordance with regulation 5 of those Regulations)."

Marginal Citations

M35 S.I. 1990/2463; relevant amending instruments are S.I. 1999/1603, S.S.I. 2002/269 and 2003/289.

Revocations

13. The Tin in Food Regulations 1992 [M36] and the Contaminants in Food (Scotland) Regulations 2003 [M37] are revoked.

Marginal Citations

M36 S.I. 1992/496.

M37 S.S.I. 2003/289.

St Andrew's House,
Edinburgh
2nd December 2004

RHONA BRANKIN
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, revoke and re-enact with changes the Contaminants in Food (Scotland) Regulations 2003.

The Regulations–

(a) make provision for the continued enforcement and execution of Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs ("the Commission Regulation") (as corrected by a corrigendum published on 30th November 2001) and as amended by Council Regulation (EC) No. 2375/2001, Commission Regulation (EC) No. 221/2002, Commission Regulation (EC) No. 257/2002, Commission Regulation (EC) No. 472/2002 (as corrected by corrigendum published on 23rd March 2002), Commission Regulation (EC) No. 563/2002 (as corrected by a corrigendum published on 14th June 2002), Commission Regulation (EC) No. 1425/2003, Commission Regulation (EC) No. 2174/2003, Commission Regulation (EC) No. 242/2004, Commission Regulation (EC) No. 455/2004 and Commission Regulation (EC) No. 684/2004;

(b) implement the following Commission Directives:–

  (i) Commission Directive 98/53/EC laying down the sampling methods and methods of analysis for the official control of the levels for certain contaminants in foodstuffs;

  (ii) Commission Directive 2001/22/EC laying down the sampling methods and the methods of analysis for the official control of the levels of lead, cadmium, mercury and 3-MCPD in foodstuffs (as corrected by a Commission Decision of 4th December 2001);

  (iii) Commission Directive 2002/26/EC laying down the sampling methods and the methods of analysis for the official control of the levels of ochratoxin A in foodstuffs;

  (iv) Commission Directive 2002/27/EC amending Directive 98/53/EC laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs; and

  (v) Commission Directive 2002/69/EC laying down the sampling methods and the methods of analysis for the official control of dioxins and determination of dioxin-like PCBs in foodstuffs (as corrected by a corrigendum published on 20th September 2002);

  (vi) Commission Directive 2003/78/EC laying down the sampling methods and the methods of analysis for the official control of the levels of patulin in foodstuffs; and

  (vii) Commission Directive 2004/16/EC laying down the sampling methods and the methods of analysis for the official control of the levels of tin in canned foods;

(c) subject to transitional provisions (in regulations 10 and 11), provide that it is an offence to–

  (i) place on the market certain foods if they contain contaminants of any kind specified in the Commission Regulation at levels exceeding those specified (subject to a derogation applicable to certain types of lettuce and spinach);

  (ii) use foods containing such contaminants at such levels as ingredients in the production of certain foods;

  (iii) mix foods which comply with the maximum levels referred to above with foods which do not;

(iv) mix foods to which the Commission Regulation relates and which are intended for direct consumption with foods to which the Commission Regulation relates and which are intended to be sorted or otherwise treated prior to consumption; or

(v) detoxify by chemical treatments food not complying with the limits specified in the Commission Regulation (regulation 3);

(d) specify the enforcement authorities (regulation 4);

(e) prescribe sampling and analysis requirements in relation to foods subject to the Commission Regulation, and in so doing modify section 29 of the Food Safety Act 1990 so far as it applies to the taking of samples of the foods concerned (regulation 5);

(f) provide a defence in relation to exports in implementation of Article 12 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (regulation 6);

(g) provide for the application of specified provisions of the Food Safety Act 1990 for the purposes thereof (regulation 7);

(h) provide for the re-export out of the European Community of food presented for import which fails to comply with certain requirements of regulation 3 but does not pose a serious risk to human health and the destruction of such food where it does pose such a risk (regulation 8);

(i) establish a process by which certain food that has been presented for import may be placed on the market subject to conditions (regulation 9);

(j) make consequential amendments to the Food Safety (Sampling and Qualifications) Regulations 1990 (regulation 12); and

(k) revoke the Contaminants in Food (Scotland) Regulations 2003, and the Tin in Food Regulations 1992 in so far as they apply to Scotland (regulation 13).

The Regulations differ from the Contaminants in Food (Scotland) Regulations 2003 by–

(a) introducing methods of sampling and analysis relating to the presence of patulin and tin in food (regulation 5(1)(f) and (g));

(b) extending the transitional provisions to food containing patulin (regulation 11(b));

(c) permitting certain food that has been presented for import to be placed on the market subject to conditions (regulation 9).

Four Regulatory Impact Assessments, which include a compliance cost assessment of the effects which these Regulations would have on business costs, have been prepared in respect of these Regulations and a copy of each has been placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency, 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.

Changes to legislation:
The Contaminants in Food (Scotland) Regulations 2004 is up to date with all changes known to be in force on or before 17 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.
View outstanding changes

Changes and effects yet to be applied to :

- Instrument rev (1.1.2006) by S.S.I. 2005/606 reg 8
- reg 2 defn(s) am by S.S.I. 2005/277 regs 23