

2005 No. 606

FOOD

The Contaminants in Food (Scotland) Regulations 2005

Made - - - - 28th November 2005

Laid before the Scottish Parliament 30th November 2005

Coming into force - - 1st January 2006

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), 31(1) and (2)(b), (c) and (f) and 48(1) of the Food Safety Act 1990(a), and of all other powers enabling them in that behalf, having had regard, in accordance with section 48(4A)(b) of that Act, to relevant advice given by the Food Standards Agency and after consultation 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) hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Contaminants in Food (Scotland) Regulations 2005 and come into force on 1st January 2006.

(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 of section 1 of Annex I to the Commission Regulation, which complies with the conditions of the derogation under Article 3b2 of that Regulation in relation to the United Kingdom;

“authorised spinach” means spinach of the kind specified in point 1.1 of section 1 of Annex I to the Commission Regulation, which complies with the conditions of the derogation under Article 3b1 of that Regulation in relation to the United Kingdom;

(a) 1990 c.16; section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990; sections 16(1) and 48(1) were amended by the Food Standards Act 1999 (c.28) (“the 1999 Act”), section 40(1) and Schedule 5, paragraph 8; section 17(1) and (2) was amended by the 1999 Act, section 40(1) and Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, section 40(4) and Schedule 6; section 48(4) is disappplied in respect of these Regulations by virtue of section 48(4C), inserted by S.I. 2004/2990; amendments made by Schedule 5 to 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, so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Insofar as not so transferred, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849).

(b) Section 48(4A) was inserted by the 1999 Act, Schedule 5, paragraph 21.

(c) O.J. No. L 31, 1.2.02, p.1, as last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.03, p.4).

“the Commission Regulation” means Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs(a), as corrected by a corrigendum published on 30th November 2001(b) and as amended by Council Regulation (EC) No. 2375/2001(c), Commission Regulation (EC) No. 221/2002(d), Commission Regulation (EC) No. 257/2002(e), Commission Regulation (EC) No. 472/2002(f) as corrected by a corrigendum published on 23rd March 2002(g), Commission Regulation (EC) No. 563/2002(h) as corrected by a corrigendum published on 14th June 2002(i), Commission Regulation (EC) No. 1425/2003(j), Commission Regulation (EC) No. 2174/2003(k), Commission Regulation (EC) No. 242/2004(l), Commission Regulation (EC) No. 455/2004(m), Commission Regulation (EC) No. 655/2004(n), Commission Regulation (EC) No. 683/2004(o), Commission Regulation (EC) No. 684/2004(p), Commission Regulation (EC) No. 78/2005(q), Commission Regulation (EC) No. 123/2005(r), Commission Regulation (EC) No. 208/2005(s) and Commission Regulation (EC) No. 1822/2005(t);

“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(u), as amended by Commission Directive 2002/27/EC(v), Commission Directive 2003/121/EC(w) and Commission Directive 2004/43/EC(x);

“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(y), as corrected by Commission Decision 2001/873/EC(z) and as amended by Commission Directive 2005/4/EC(aa);

“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(bb), as amended by Commission Directive 2004/43/EC and Commission Directive 2005/5/EC(cc);

“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(dd), as corrected by a corrigendum published on 20th September 2002(ee) and as amended by Commission Directive 2004/44/EC(ff);

-
- (a) O.J. No. L 77, 16.3.01, p.1.
 - (b) O.J. No. L 313, 30.11.01, p.60.
 - (c) O.J. No. L 321, 6.12.01, p.1.
 - (d) O.J. No. L 37, 7.2.02, p.4.
 - (e) O.J. No. L 41, 13.2.02, p.12.
 - (f) O.J. No. L 75, 16.3.02, p.18.
 - (g) O.J. No. L 80, 23.3.02, p.42.
 - (h) O.J. No. L 86, 3.4.02, p.5.
 - (i) O.J. No. L 155, 14.6.02, p.63.
 - (j) O.J. No. L 203, 12.8.03, p.1.
 - (k) O.J. No. L 326, 13.12.03, p.12.
 - (l) O.J. No. L 42, 13.2.04, p.3.
 - (m) O.J. No. L 74, 12.3.04, p.11.
 - (n) O.J. No. L 104, 8.4.04, p.48.
 - (o) O.J. No. L 106, 15.4.04, p.3.
 - (p) O.J. No. L 106, 15.4.04, p.6.
 - (q) O.J. No. L 16, 20.1.05, p.43.
 - (r) O.J. No. L 25, 28.1.05, p.3.
 - (s) O.J. No. L 34, 8.2.05, p.3.
 - (t) O.J. No. L 293, 9.11.05, p.11.
 - (u) O.J. No. L 201, 17.7.98, p.93.
 - (v) O.J. No. L 75, 16.3.02, p.44.
 - (w) O.J. No. L 332, 19.12.03, p.38.
 - (x) O.J. No. L 113, 20.4.04, p.14.
 - (y) O.J. No. L 77, 16.3.01, p.14.
 - (z) O.J. No. L 325, 8.12.01, p.34.
 - (aa) O.J. No. L 19, 21.1.05, p.50.
 - (bb) O.J. No. L 75, 16.3.02, p.38.
 - (cc) O.J. No. L 27, 29.1.05, p.38.
 - (dd) O.J. No. L 209, 6.8.02, p.5.
 - (ee) O.J. No. L 252, 20.9.02, p.40.
 - (ff) O.J. No. L 113, 20.4.04, p.17.

“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(a);

“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(b);

“Directive 2005/10/EC” means Commission Directive 2005/10/EC laying down the sampling methods and the methods of analysis for the official control of the levels of benzo(a)pyrene in foodstuffs(c); and

“Regulation 882/2004” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(d).

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

Offences and penalties

3.—(1) Subject to the transitional arrangements contained in the Community provisions specified in paragraph (2), a person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale if that person—

- (a) places on the market any food (other than authorised lettuce or authorised spinach) which is covered by, but fails to meet the requirements of, Article 1.1 of the Commission Regulation, as read with Articles 1.2, 2.1, 2.2, 4.1 and 4.3 of that Regulation; or
- (b) contravenes Article 2.3, 4.2 or 4a of the Commission Regulation.

(2) The Community provisions referred to in paragraph (1) are—

- (a) Article 7 of the Commission Regulation;
- (b) Article 2 of Commission Regulation (EC) No. 655/2004 amending Regulation (EC) No. 466/2001 as regards nitrate in foods for infants and young children;
- (c) Article 3 of Commission Regulation (EC) No. 683/2004 amending Regulation (EC) No. 466/2001 as regards aflatoxins and ochratoxin A in foods for infants and young children;
- (d) Article 2 of Commission Regulation (EC) No. 123/2005 amending Regulation (EC) No. 466/2001 as regards ochratoxin A; and
- (e) Article 2 of Commission Regulation (EC) No. 208/2005 amending Regulation (EC) No. 466/2001 as regards polycyclic aromatic hydrocarbons.

Enforcement

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

Procurement and analysis of samples

5.—(1) Where a sample is to be taken under section 29(b) or (d) of the Act of a food specified in Annex I to the Commission Regulation, that sample shall be taken in accordance with the methods of taking samples described or referred to—

Nitrate

- (a) (subject to the requirement specified in column 3 of section 1 of Annex I to the Commission Regulation(e)), in the Annex to Commission Directive 2002/63/EC

(a) O.J. No. L 203, 12.8.03, p.40.

(b) O.J. No. L 42, 13.2.04, p.16.

(c) O.J. No. L 34, 8.2.05, p.15.

(d) O.J. No. L 191, 28.5.04, p.1.

(e) The requirement is that the minimum number of units required for a laboratory sample in such circumstances is 10.

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(a), 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 that Regulation;

Aflatoxins

- (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 that Regulation;

Ochratoxin A

- (c) 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 that Regulation;

Patulin

- (d) 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 that Regulation;

Lead, cadmium, mercury and 3-MCPD

- (e) 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 that Regulation;

Dioxins and dioxin-like PCBs

- (f) 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 that Regulation;

Tin

- (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 that Regulation; and

Benzo(a)pyrene

- (h) in Annex I to Directive 2005/10/EC, where the food concerned is of a description specified in section 7 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation.

Preparation and analysis of samples for aflatoxins

(2) Where, pursuant to section 29(b) or (d) of the Act as read with 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 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 has been designated under Article 12 of Regulation 882/2004;
- (d) the reporting of the results of the analysis of that sample—

(a) O.J. No. L 187, 16.7.02, p.30.

- (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.

Preparation and analysis of samples for lead, cadmium, mercury and 3-MPCD

(3) Where, pursuant to section 29(b) or (d) of the Act as read with 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 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) in the case of analysis for lead (other than in wine), mercury or cadmium, meet the criteria specified in paragraph 3.3.1 (as read with paragraph 3.3.3) of Annex II to Directive 2001/22/EC;
 - (ii) in the case of analysis for lead in wine, comply with the second sub-paragraph of paragraph 3.2 of that Annex; and
 - (iii) in the case of analysis for 3-MCPD, meet the criteria specified in paragraph 3.3.2 (as read with paragraph 3.3.3) of that Annex, as read with the note to that paragraph;
- (c) any analysis of the sample is carried out by a laboratory which has been designated under Article 12 of Regulation 882/2004;
- (d) any analysis of the sample is carried out in such a way as to comply with the first and third sub-paragraphs of paragraph 3.4 of Annex II to Directive 2001/22/EC, as read in the case of the third 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 second and fourth sub-paragraphs of paragraph 3.4 and with paragraph 3.6 of that Annex.

Preparation and analysis of samples for ochratoxin A

(4) Where, pursuant to section 29(b) or (d) of the Act as read with 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 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 meet the criteria specified in paragraph 4.3 of Annex II to Directive 2002/26/EC;
- (c) any analysis of the sample is carried out by a laboratory which has been designated under Article 12 of Regulation 882/2004; 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.

Preparation and analysis of samples for dioxins and dioxin-like PCBs

(5) Where, pursuant to section 29(b) or (d) of the Act as read with 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 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 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;
- (c) any analysis of the sample is carried out by a laboratory which–
 - (i) complies with the first four sub-paragraphs of paragraph 4 of Annex II to Directive 2002/69/EC; and
 - (ii) has been designated under Article 12 of Regulation 882/2004; and
- (d) 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.

Preparation and analysis of samples for patulin

(6) Where, pursuant to section 29(b) or (d) of the Act as read with 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 2003/78/EC;
- (b) any analysis of the sample is carried out in accordance with methods of analysis which 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 has been designated under Article 12 of Regulation 882/2004; 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.

Preparation and analysis of samples for tin

(7) Where, pursuant to section 29(b) or (d) of the Act as read with 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 of Annex II to Directive 2004/16/EC headed “Sample preparation”;
- (b) any analysis of the sample is carried out in accordance with methods of analysis which 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 has been designated under Article 12 of Regulation 882/2004 and complies with 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.

Preparation and analysis of samples for benzo(a)pyrene

(8) Where, pursuant to section 29(b) or (d) of the Act as read with paragraph (1), an authorised officer has taken a sample of food to which paragraph (1)(h) 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 2005/10/EC;

- (b) any analysis of the sample is carried out in accordance with methods of analysis which meet the criteria specified in paragraphs 4.3 and 4.3.1 of Annex II to Directive 2005/10/EC;
- (c) any analysis of the sample is carried out by a laboratory which has been designated under Article 12 of Regulation 882/2004 and complies with that section of paragraph 4.6 of Annex II to Directive 2005/10/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 2005/10/EC; and
 - (ii) is in accordance with paragraph 4.4 of that Annex.

Application of various sections of the Food Safety Act 1990

6.—(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 14 or 15;
- (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), insofar 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 has been placed on the market and subsections (2) to (7) below 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(1)(a) of the Contaminants in Food (Scotland) Regulations 2005 (“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, Directive 2004/16/EC or Directive 2005/10/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) above, 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(1)(a) 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(1)(a) of the Regulations might be liable to a prosecution in respect of the food shall, if attending 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(1)(a) 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”, “Directive 2004/16/EC” and “Directive 2005/10/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 meanings that those expressions respectively bear in these Regulations.

Consequential amendment

7. In Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 1990^(a) (provisions to which those Regulations do not apply), for the entry relating to the Contaminants in Food (Scotland) Regulations 2004, substitute—

“The Contaminants in Food (Scotland) Regulations 2005 (S.S.I. 2005/[]) (to the extent that a sample falls to be prepared and analysed in accordance with regulation 5 of those Regulations).”.

^(a) S.I. 1990/2463, relevantly amended by S.I. 1999/1603, S.S.I. 2002/269, 2003/289 and 2004/525.

Revocations

8. The Contaminants in Food (Scotland) Regulations 2004**(a)** and the Contaminants in Food (Scotland) Amendment Regulations 2005**(b)** are revoked.

St Andrew's House,
Edinburgh
28th November 2005

LEWIS MACDONALD
Authorised to sign by the Scottish Ministers

(a) S.S.I. 2004/525.
(b) S.S.I. 2005/277.

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 2004 (S.S.I. 2004/525) as amended. The Regulations—

- (a) make provision for the execution and enforcement of Commission Regulation (EC) No. 466/2001 setting maximum levels for contaminants in foodstuffs (O.J. No. L 77, 16.3.01, p.1, as corrected and amended) (“the Commission Regulation”);
- (b) implement the following Commission Directives—
 - (i) 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 (O.J. No. L 201, 17.7.98, p.93, as amended);
 - (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 (O.J. No. L 77, 16.3.01, p.14, as corrected and amended);
 - (iii) Commission Directive 2002/26/EC laying down the sampling methods and the methods of analysis for the official control of levels of ochratoxin A in foodstuffs (O.J. No. L 75, 16.3.02, p.38, as amended);
 - (iv) 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 (O.J. No. L 209, 6.8.02, p.5, as corrected and amended);
 - (v) 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 (O.J. No. L 203, 12.8.03, p.40);
 - (vi) 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 (O.J. No. L 42, 13.2.04, p.16); and
 - (vii) Commission Directive 2005/10/EC laying down the sampling methods and the methods of analysis for the official control of the levels of benzo(a)pyrene in foodstuffs (O.J. No. L 34, 8.2.05, p.15);
- (c) subject to transitional provisions, 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 fresh spinach);
 - (ii) use food containing such contaminants at such levels as ingredients in the production of certain foods;
 - (iii) mix foods which do not comply with the maximum levels referred to above with foods which do;
 - (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 treatment food not complying with the limits specified in the Commission Regulation (regulation 3);
- (d) specify the enforcement authorities (regulation 4);
- (e) prescribe requirements in relation to the methods of sampling and the analysis of samples of foods subject to the Commission Regulation (regulation 5);
- (f) provide for the application of specified provisions of the Food Safety Act 1990 for the purposes of these Regulations (regulation 6); and

- (g) make consequential amendments to the Food Safety (Sampling and Qualifications) Regulations 1990 (regulation 10), the effect being to disapply the sampling and analysis provisions of those Regulations only to the extent that those matters are regulated by the Community provisions implemented in these Regulations.

A regulatory impact assessment, which includes a compliance cost assessment of the effect which these Regulations would have on business costs, has been prepared for these Regulations and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency (Scotland), 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.

2005 No. 606

FOOD

The Contaminants in Food (Scotland) Regulations 2005

£3.00

© Crown Copyright 2005

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland