

EXECUTIVE NOTE

THE CONTAMINANTS IN FOOD (SCOTLAND) REGULATIONS 2005 SSI/2005/606

- 1 The above instrument was made under the powers in sections 6(4), 16(2), 17(1) and (2), 26(1)(a) and (3), 31 and 48(1) of the Food Safety Act 1990, and of all other powers enabling then in that behalf, having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency. The instrument is subject to negative resolution procedure.
- 2 **Policy Objectives/Background**
 - 2.1 The Regulations make provision for the enforcement and enactment of four European Commission Regulations which set maximum limits for lead, cadmium, mercury, polycyclic aromatic hydrocarbons (PAHs), ochratoxin A, and nitrate. They also implement three allied Commission Directives laying down the sampling methods and methods of analysis for the official control of those contaminants specified in the legislation.
- 3 **Timing**
 - 3.1 The Regulations are intended to come into force on 1 January 2006.
- 4 **Discussion**
 - 4.1 European Regulation (EC) No. 466/2001, which was introduced under the contaminants framework Regulation, Council Regulation EEC 315/93, sets maximum limits for certain contaminants in foodstuffs and has applied across the European Union since April 2002. The aim of the Regulation is to keep chemical contaminants in food at levels that are toxicologically acceptable and thereby provide consumers with an increased measure of protection. Maximum limits for lead, cadmium, mercury, dioxins, inorganic tin, aflatoxins, ochratoxin A, patulin, nitrate and 3-MCPD have already been set under this legislation.
 - 4.2 Commission Regulation 466/2001 is currently enforced in Scotland under The Contaminants in Food (Scotland) Regulations 2004 (SSI 2004 No. 525) as amended by The Contaminants in Food (Scotland) (Amendment) Regulations 2005 (SSI 2005 No. 277). These Regulations also implement a number of allied Commission Directives, which support Regulation 466/2001 by laying down the sampling methods and the methods of analysis for the official control of those contaminants specified in the legislation.

- 4.3 The following Commission Regulations, which amend Commission Regulation 466/2001 and the related sampling and analysis Directives, have recently been adopted:
- **Commission Regulation (EC) No 78/2005** of 19 January 2005, which specifically applies to heavy metals in seafood. The Regulation amends the lists of species and sets revised limits for lead in tuna and cadmium in swordfish;
 - **Commission Regulation (EC) No 123/2005** of 26 January 2005 sets maximum limits for ochratoxin A in wine, coffee and grape juices. The Regulation is supported by **Commission Directive 2005/5/EC** which lays down the sampling methods and methods of analysis for the official control of levels of ochratoxin A in these foods;
 - **Commission Regulation (EC) No 208/2005** of 4 February 2005 sets maximum limits for polycyclic aromatic hydrocarbons (PAHs), specifically Benzo(a)pyrene (BaP) in certain foodstuffs. The Regulation is supported by **Commission Directive 2005/10/EC** which lays down the sampling methods and methods of analysis for the official control of the levels of BaP in foodstuffs;
 - **Commission Regulation (EC) No 1822/2005** of 8 November 2005 amends the time periods during summer and winter to which maximum limits apply for nitrate in fresh spinach. It also extends the derogation period for certain Member States whereby fresh spinach and fresh lettuce are exempt from the limits when produced and placed on the market in the country to which the derogation applies, including the UK and;
 - **Commission Directive 2005/4/EC** of 19 January 2005, which amends Commission Directive 2001/22/EC laying down the sampling methods and the methods of analysis for the official control of lead, cadmium, mercury and 3-MCPD in foodstuffs.
- 4.4 The Contaminants in Food (Scotland) Regulations 2005 will make provision for the enforcement and transposition of these measures and will revoke and replace The Contaminants in Food (Scotland) Regulations 2004, as amended. Corresponding Regulations will apply in England, Wales and Northern Ireland.
- 4.5 In particular, Member States are required to make provisions to comply with the Commission Directives by 8 February 2006 (Commission Directive 2005/4/EC and Commission Directive 2005/10/EC) and 18 February 2006 (Commission Directive 2005/5/EC).
- 4.6 The Contaminants in Food (Scotland) Regulations 2005 have also been modified to make allowance for provisions that are now included in the Official Feed and Food Control (Scotland) Regulations 2005, which also implement European legislation and come into force on 1 January 2006. The latter Regulations now provide for the inspection, procurement and analysis of food samples, defence in relation to exports and the re-export or destruction of food, specifically in relation to samples not already in free circulation i.e. imported food from third countries.
- 4.7 Additional miscellaneous alterations have also been made to improve the structure and application of the Contaminants in Food (Scotland) Regulations 2005 and to simplify the content where possible. This includes the removal

of unnecessary transitional conditions, which are provided for directly by the Commission Regulations; removal of unnecessary provisions in relation to products that are intended for further processing; restructuring of text and introduction of sub-headings in Regulation 5 to make this section more understandable and insertion of text into the explanatory note to further clarify certain parts of the Regulations.

5 Consultation

- 5.1 The Food Standards Agency Scotland carried out a 12 week consultation of 275 interested parties ending on 21 October 2005. Seven responses were received of which 3 were 'no comment' responses. A common comment concerned the complexity of these regulations, which has been addressed as far as possible within the legal framework of the Regulations. The attached RIAs (Annex 2A & 2B) describe the anticipated effects of these new measures on enforcement authorities which, from the information received, are expected to be minimal.
- 5.2 Food Standards Agency colleagues in England, Wales and Northern Ireland have carried out their own parallel consultation exercises and are preparing their own implementing legislation.

6 Financial Implications

- 6.1 The impact on the public sector is believed to be minimal. Some costs to the Exchequer may arise from the costs to enforcement authorities in carrying out sampling and analysis to check for the levels of heavy metals, benzo(a)pyrene and ochratoxin A in foods, as part of their existing responsibilities.

Food Standards Agency Scotland
24 November 2005