

2006 No. 306

FOOD

The Contaminants in Food (Scotland) Regulations 2006

Made - - - - *7th June 2006*

Laid before the Scottish Parliament *7th June 2006*

Coming into force - - *1st July 2006*

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(a), (e) and (f), 17(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 2006 and come into force on 1st July 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 3b.2 of that Regulation in relation to the United Kingdom;

“authorised officer” means any person who is authorised in writing, either generally or specifically, by a food authority to act in matters arising under these Regulations;

(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(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 disapplied 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, section 40(1) and Schedule 5, paragraph 21.

(c) O.J. No. L 31, 1.2.02, p.1, as last amended by Commission Regulation (EC) No. 575/2006 amending Regulation (EC) No. 178/2002 of the European Parliament and of the Council as regards the number and names of the permanent Scientific Panels of the European Food Safety Authority (O.J. No. L 100, 8.4.06, p.3).

“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 3b.1 of that Regulation in relation to the United Kingdom; and

“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), Commission Regulation (EC) No. 1822/2005(t), Commission Regulation (EC) No. 856/2005(u) and (from 4th November 2006) Commission Regulation (EC) No. 199/2006(v).

(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;

(a) O.J. No. L 77, 16.3.01, p.1. Article 1.3 of and Annex I to this Regulation specify the Community methods of sampling and analysis that are required to be used for the official control of levels of the substances covered by the Regulation. These methods are set out in Commission Directives 2001/22/EC, 2002/63/EC, 2002/69/EC, 2004/16/EC and 2005/10/EC and in Commission Regulation (EC) No. 401/2006. More details of these instruments are given in the Explanatory Note to these Regulations.

- (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 143, 7.6.05, p.3.
- (v) O.J. No. L 32, 4.2.06, p 34.

- (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;
- (e) Article 2 of Commission Regulation (EC) No. 208/2005 amending Regulation (EC) No. 466/2001 as regards polycyclic aromatic hydrocarbons;
- (f) Article 2 of Commission Regulation (EC) No. 856/2005 amending Regulation (EC) No. 466/2001 as regards *Fusarium* toxins; and
- (g) With effect from 4th November 2006, Article 2 of Commission Regulation (EC) No. 199/2006 amending Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs as regards dioxins and dioxin-like PCBs.

Enforcement

4. It shall be the duty of each food authority within its area to execute and enforce these Regulations.

Application of various sections of the Food Safety Act 1990

5.—(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 2006 (“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 sampling in the manner required by Article 1.3 of the Commission Regulation; 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(1)(a) of the Regulations, as appropriate and—

- (a) if that officer is so satisfied, forthwith withdraw the notice; or
- (b) if that officer is not so satisfied, 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 by the sheriff 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) 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 “authorised officer”, “placing on the market” and “the Commission Regulation” 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.

Consequential amendment

6. 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 2005, substitute—

“ The Contaminants in Food (Scotland) Regulations 2006 (to the extent that a sample falls to be prepared and analysed in accordance with the Commission Regulation as that expression is defined in those Regulations). S.S.I. 2006/306 ”

(a) S.I. 1990/2463, relevantly amended by S.I. 1999/1603, and S.S.I. 2002/267, 2003/289, 2004/525 and 2005/606.

Revocation

7. The Contaminants in Food (Scotland) Regulations 2005(a) are revoked.

St Andrew's House,
Edinburgh
7th June 2006

LEWIS MACDONALD
Authorised to sign by the Scottish Ministers

(a) S.S.I. 2005/606.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which extend to Scotland only, revoke and re-enact with changes the Contaminants in Food (Scotland) Regulations 2005 (S.S.I. 2005/606). They 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, 16.3.2001, p.1, as corrected and amended) (“the Commission Regulation”). Recent amendments to the Commission Regulation–

- (a) introduced maximum permitted levels and other controls relating to certain *Fusarium* toxins (Commission Regulation (EC) No. 856/2005, O.J. No. L 143, 7.6.05, p.3); and
- (b) introduced new or amended controls relating to dioxins and the sum of dioxins and dioxin-like PCBs (Commission Regulation (EC) No. 199/2006, O.J. No. L 32, 4.2.06, p.34).

2. The Regulations–

- (a) provide that it is an offence (except in certain cases relating to food placed on the market before a date given in specified Community legislation)–
 - (i) to 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 to fresh spinach);
 - (ii) to use food containing such contaminants at such levels as ingredients in the production of certain foods;
 - (iii) to mix foods that do not comply with the maximum levels referred to above with foods which do comply;
 - (iv) to 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) to detoxify by chemical treatment food not complying with the limits specified in the Commission Regulation (regulation 3);
- (b) specify the enforcement authorities (regulation 4);
- (c) provide for the application of specified provisions of the Food Safety Act 1990 for the purposes of these Regulations (regulation 5); and
- (d) make a consequential amendment to the Food Safety (Sampling and Qualifications) Regulations 1990 (regulation 6), 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 instruments mentioned in paragraph 3(a) to (f) below.

3. The Commission Regulation specifies the Community 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 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 by Commission Decision 2001/873/EC (O.J. No. L 325, 8.12.01, p.34) and as amended by Commission Directive 2005/4/EC (O.J. No. L 19, 21.1.05, p.50);
- (b) 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 (O.J. No. L 187, 16.7.02, p.30);
- (c) 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 by a corrigendum published on 20th September 2002 (O.J. No. L 252, 20.9.02, p.40) and as amended by Commission Directive 2004/44/EC (O.J. No. L 113, 20.4.04, p.17);

- (d) 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);
- (e) 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); and
- (f) 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 (O.J. No. L 70, 9.3.06, p.12). This Regulation repeals the sampling and analysis Directives 98/53/EC, 2002/26/EC, 2003/78/EC and 2005/38/EC and stipulates that any reference to those Directives in the Commission Regulation is to be read as a reference to Commission Regulation (EC) 401/2006.

4. A full regulatory impact assessment, which includes a compliance cost assessment of the effect which these Regulations will 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.

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