

**2007 No. 29**

**FOOD**

**The Contaminants in Food (Scotland) Regulations 2007**

*Made* - - - - *1st February 2007*

*Laid before the Scottish Parliament* *2nd February 2007*

*Coming into force* - - *1st March 2007*

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 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 2007 and come into force on 1st March 2007.

(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 the Annex to the Commission Regulation, which complies with the conditions of the derogation under Article 7(2) 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;

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(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 amended by Regulation (EC) No 1642/2003 of the European Parliament and of the Council amending Regulation (EC) No 178/2002 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 (O.J. No. L 245, 29.9.03, p. 4) and Commission Regulation (EC) No. 575/2006 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 the Annex to the Commission Regulation, which complies with the conditions of the derogation under Article 7(1) in relation to the United Kingdom; and

“the Commission Regulation” means Commission Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs<sup>(a)</sup>;

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

(3) Any reference to a numbered Article is a reference to the Article so numbered in the Commission Regulation.

### **Offences and penalties**

3.—(1) Subject to paragraph (3) and to the transitional arrangements contained in Article 11, it is an offence to contravene or fail to comply with any of the Community provisions specified in paragraph (2).

(2) The provisions mentioned in paragraph (1) are—

(a) Article 1(1) (prohibition on the placing on the market of foodstuffs containing contaminants in excess of prescribed limits), as read with Articles 1.2, 2, 4 and 5; and

(b) Article 3 (prohibitions on use, mixing and detoxification).

(3) Paragraph (1) does not apply to the placing on the market of authorised lettuce or authorised spinach.

(4) Any person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

### **Enforcement and competent authorities**

4.—(1) It shall be the duty of each food authority within its area to execute and enforce these Regulations and the Commission Regulation.

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

### **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—

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(a) O.J. No. L 364, 20.12.06, p.5.

“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 fails to comply with the requirements specified in regulation 3(2)(a) of the Contaminants in Food (Scotland) Regulations 2007 (“the Regulations”), as read with regulation 3(3) of the Regulations and with Article 11 of the Commission Regulation (“the Community requirements”).

(2) The authorised officer may either—

- (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it—
  - (i) is not to be used for human consumption; and
  - (ii) either is not to be removed or is to be removed to a place at which there are facilities to carry out sampling in the manner required by Article 8 of the Commission Regulation; or
- (b) seize the food and remove it in order to have it dealt with by the sheriff.

(3) Where the 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 Community requirements 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(2)(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 Community requirements, 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) above 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”, “food authority”, “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 meanings that those expressions respectively bear in these Regulations.

### **Consequential amendment**

6. In Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 1990<sup>(a)</sup> (provisions to which those Regulations do not apply), for the entry relating to the Contaminants in Food (Scotland) Regulations 2006<sup>(b)</sup>, substitute—

“The Contaminants in Food (Scotland) Regulations 2007 (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. 2007/29.”

### **Revocation**

7. The Contaminants in Food (Scotland) Regulations 2006 are revoked.

St Andrew's House,  
Edinburgh  
1st February 2007

*LEWIS MACDONALD*  
Authorised to sign by the Scottish Ministers

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<sup>(a)</sup> S.I. 1990/2463, relevantly amended by S.I. 1999/1603, S.S.I. 2002/267 and 2003/289.  
<sup>(b)</sup> S.S.I. 2006/306.

## 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 2006 (“the 2006 Regulations”). They make provision for the execution and enforcement of Commission Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs (O.J. No. L 364, 20.12.06, p.5) (“the Commission Regulation”). The Commission Regulation consolidates and makes further amendments to the provisions formerly contained in Commission Regulation (EC) No. 466/2001, as amended.

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 so comply;
  - (iv) to mix foods to which the Commission Regulation relates and which are intended for direct consumption or as food ingredients with foods to which the Commission Regulation relates and which are intended to be sorted or otherwise treated prior to consumption; or
  - (v) to detoxify by chemical treatment food containing mycotoxins in excess of 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);
- (d) make a consequential amendment to the Food Safety (Sampling and Qualifications) Regulations 1990 in so far as they extend to Scotland (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.

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 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);
- (c) 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);

- (d) 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);
- (e) Commission Regulation (EC) No. 1882/2006 laying down methods of sampling and analysis for the official control of the levels of nitrates in certain foodstuffs (O.J. No. L 364, 20.12.06, p.25); and
- (f) Commission Regulation (EC) No. 1883/2006 laying down methods of sampling and analysis for the official control of levels of dioxins and dioxin-like PCBs in certain foodstuffs (O.J. No. L 364, 20.12.06, p.32).

A full 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.



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