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STATUTORY INSTRUMENTS

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**1999 No. 1603**

**FOOD**

**The Contaminants in Food (Amendment) Regulations 1999**

<i>Made</i>	- - - -	<i>7th June 1999</i>
<i>Laid before Parliament</i>		<i>8th June 1999</i>
<i>Coming into force</i>	- -	<i>30th June 1999</i>

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Health and the Secretary of State for Wales, acting jointly, in relation to England and Wales, and the Secretary of State for Scotland in relation to Scotland, in exercise of the powers conferred on them by sections 6(4), 16(1) (a) and (f), 17(2), 26(2)(a) and (3), 31 and 48(1) of the Food Safety Act 1990<sup>(1)</sup> and of all other powers enabling them in that behalf, after consultation in accordance with section 48(4) of that Act with such organisations as appear to them to be representative of interests likely to be substantially affected by the Regulations, hereby make the following Regulations:

**Title, commencement and interpretation**

1.—(1) These Regulations may be cited as the Contaminants in Food (Amendment) Regulations 1999 and shall come into force on 30th June 1999.

(2) In these Regulations “the principal Regulations” means the Contaminants in Food Regulations 1997<sup>(2)</sup>.

**Amendment of the principal Regulations**

2. The principal Regulations shall be amended in accordance with regulations 3 to 8 below.
3. In paragraph (1) of regulation 2 (interpretation)—
  - (a) at the end of the definition of “the Commission Regulation” there shall be inserted the words “as amended by Commission Regulation (EC) No. 1525/98<sup>(3)</sup> and Commission Regulation (EC) No. 864/1999<sup>(4)</sup>”;
  - (b) after the definition of “the Commission Regulation” there shall be inserted the following—

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(1) 1990 c. 16; “the Ministers” is defined in section 4(1) of the Act. Section 6(4) of the Act was amended by paragraph 6 of Schedule 9 to the Deregulation and Contracting Out Act 1994 (c. 40).  
(2) S.I.1997/1499.  
(3) OJ No. L201, 17.7.98, p. 43.  
(4) OJ No. L108, 27.4.1999, p. 16.

““designated place” means any place at which there are the facilities to carry out the sampling required by Directive 98/53/EC;

“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(5);”;

(c) in the definition of “food authority” paragraph (a) and the word “or” immediately following that paragraph shall be omitted;

(d) after the definition of “member State” there shall be inserted the following–

““port health authority” includes a port local authority and a joint port local authority and, in relation to a port health authority, “authorised officer” means any person (whether or not an officer of the authority) who is authorised by the authority in writing to act in matters arising under these Regulations; and

“ultimate consumer” has the same meaning as in the Food Labelling Regulations 1996(6);”.

4. For paragraph (1) of regulation 3 (offences and penalties) there shall be substituted the following–

“(1) 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) he places on the market any food (other than authorised lettuce or spinach) which is covered by, but fails to meet the requirements of, Article 2.1 as read with Article 2.5;

(b) he contravenes Article 2.4; or

(c) he knowingly contravenes or fails to comply with the requirements of a notice given under section 9(3)(a) of the Act as applied with modifications by regulation 6 of these Regulations.”.

5. In regulation 4 (enforcement) after the words “food authority” there shall be inserted the words “and port health authority”.

6. After regulation 4 there shall be inserted the following regulation–

**“Sampling, analysis and modification of section 29 of the Act**

4A.—(1) In its application to the taking, for the purposes of these Regulations, of a sample of any food described in point I.2.1 of the Annex to the Commission Regulation, section 29 of the Act shall be modified so as to limit the power to take samples under subsection (b) of that section to the taking of samples in accordance with the methods of taking samples described, or referred to, in Annex I to Directive 98/53/EC(7).

(2) An authorised officer who has procured a sample of any food of a description in point I.2.1 of the Annex to the Commission Regulation under section 29(b) of the Act, as modified by paragraph (1) of this regulation, shall ensure–

(a) that the sample is prepared in accordance with–

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

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(5) OJ No. L201, 17.7.98, p. 93.

(6) S.I. 1996/1499; to which there are amendments not relevant to these Regulations.

(7) Paragraphs 5.4.1 and 5.5.1.1 of Annex I to Directive 98/53/EC refer, in relation to the products covered by them, to sampling in accordance with Commission Decision 91/180/EEC (OJ No. L93, 13.4.91, p. 1) laying down certain methods of analysis and testing of raw milk and heat-treated milk and Commission Directive 87/524/EEC (OJ No. L306, 28.10.87, p. 24) laying down Community methods of sampling for chemical analysis for the monitoring of preserved milk products.

- (ii) in the case of whole nuts, paragraph 1.2 of that Annex;
  - (b) that any analysis of the sample is carried out in accordance with methods of analysis which—
    - (i) if possible, comply with paragraphs 1 and 2 of the Annex to Council Directive 85/591 concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption<sup>(8)</sup>; and
    - (ii) meet the criteria specified in paragraph 4.3 of Annex II to Directive 98/53/EC as read with the notes thereto;
  - (c) that any analysis is carried out by a laboratory which complies with Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs<sup>(9)</sup>; and
  - (d) that the reporting of the result of the analysis of that 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.”.
7. After regulation 5 there shall be inserted the following regulation—

**“Record keeping**

**5A.—**(1) A person in possession of any food of any of the descriptions in point I.2.1 of the Annex to the Commission Regulation shall, where that food is at a place other than premises at which it is to be prepared for or offered for sale to the ultimate consumer, keep and maintain such records as are sufficient to show—

- (a) the place of origin of that food; and
- (b) if that food is intended to be delivered to another person for the purpose of sale or preparation for sale, the name and address of the person to whom the food is intended to be delivered.

(2) Any person who is required by paragraph (1) above to keep such records as are referred to in that paragraph shall, on reasonable demand being made by an authorised officer, produce those records to that officer for inspection.

(3) A person shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale if—

- (a) he fails to comply with paragraph (1) above;
- (b) in purported compliance with paragraph (2) above he furnishes any record containing information which he knows to be false or misleading in a material particular; or
- (c) without reasonable excuse, he fails to comply within a reasonable time with a demand made under paragraph (2) above.”.

8. After paragraph (2) of regulation 6 there shall be inserted the following paragraphs—

“(3) Section 9 of the Act (inspection and seizure of suspected food) shall, subject to paragraphs (4) and (5) below, apply for the purposes of these Regulations with the following modifications—

- (a) in subsection (1)—

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<sup>(8)</sup> OJ No. L372, 31.12.85, p. 50.

<sup>(9)</sup> OJ No. L290, 24.11.93, p. 14.

- (i) after the words “food authority” there shall be inserted the words “or a port health authority”; and
  - (ii) the reference to subsections (3) to (9) shall be construed as including reference to those subsections as modified by this regulation; and
  - (iii) for the words “any food fails to comply with food safety requirements” there shall be substituted the words “the placing on the market of any food may contravene Article 2.1 of the Commission Regulation unless that food is lettuce or spinach in point 1.1 of the Annex to the Commission Regulation which is grown in the United Kingdom in accordance with the proviso to Article 2.2 of the Commission Regulation and is intended for consumption in the United Kingdom”;
- (b) in subsections (4), (6) and (9) for the words “food safety requirements” there shall be substituted the words “the requirements of Article 2.1 of the Commission Regulation as to levels of contaminants”;
  - (c) in subsections (4) and (7) the reference to subsection (3) shall be construed as including reference to that subsection as modified by this regulation;
  - (d) in subsection (5)–
    - (i) the reference to subsections (3) and (4) shall be construed as including reference to those subsections as modified by this regulation; and
    - (ii) the reference to section 7 or 8 shall be construed as including a reference to these Regulations; and
  - (e) in subsection (7) after the words “food authority” there shall be inserted the words “or port health authority, as appropriate,”.

(4) In so far as section 9 of the Act, as modified by paragraph (1) above, applies to an authorised officer acting in relation to food of any description specified in point I.2.1 of the Annex to the Commission Regulation subsection (3) of that section shall apply with the modification that for sub-paragraph (ii) of paragraph (a) thereof there shall be substituted the following–

“(ii) either is not to be removed or is to be removed to a designated place; or”.

(5) The expressions “authorised officer”, “the Commission Regulation”, “designated place”, “food authority” and “port health authority” used in the modification and application of section 9 of the Act for the purposes of these Regulations shall, for those purposes, bear the meaning that those expressions bear in these Regulations.”.

### **Amendment of other Regulations**

#### **9. In the Food Safety (Sampling and Qualifications) Regulations 1990(10)–**

- (a) at the start of regulation 2 (sampling to which those Regulations do not apply) there shall, for the word “These”, be substituted the words “Subject as specified in Schedule 1, these”; and
- (b) at the end of Schedule 1 (provisions to which those Regulations do not apply) there shall be added in the left hand column the title of the principal Regulations, followed by the words “to the extent that a sample falls to be prepared and analysed in accordance with regulation 4A thereof”, and in the right hand column their reference.

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(10) S.I. 1990/2463; to which there are amendments not relevant to these Regulations.

## Revocations

**10.**—(1) The Aflatoxins in Nuts, Nut Products, Dried Figs and Dried Fig Products Regulations 1992(**11**) are hereby revoked.

(2) In the Food Labelling Regulations 1996(**12**) paragraph (17) of regulation 49 (revocations and amendments) is hereby revoked.

2nd June 1999

*Jeff Rooker*  
Minister of State, Ministry of Agriculture,  
Fisheries and Food

Signed by authority of the Secretary of State for Health

7th June 1999

*Tessa Jowell*  
Minister of State for Public Health,  
Department of Health

Signed by authority of the Secretary of State for Wales

4th June 1999

*Jon Owen Jones*  
Parliamentary Under Secretary of State, Welsh  
Office

7th June 1999

*Sewel*  
Parliamentary Under Secretary of State, Scottish  
Office

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(11) S.I. [1992/3236](#).

(12) S.I. [1996/1499](#); to which there are amendments not relevant to these Regulations.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which apply to Great Britain, make provision for the enforcement and execution of Commission Regulation (EC) No. 1525/98 (OJ No. L201, 17.7.98, p. 43) and Commission Regulation (EC) No. 864/1999 (OJ No. L108, 27.4.1999, p. 16) both of which amend Commission Regulation (EC) No. 194/97 setting maximum levels for certain contaminants in foodstuffs (together “the Commission Regulation”). These Regulations also implement Commission Directive 98/53/EC (OJ No. L201, 17.7.98, p. 93) laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs.

These Regulations, which amend the Contaminants in Food Regulations 1997–

- (a) extend enforcement responsibilities in England to district councils (regulation 3(c));
- (b) provide that it is an offence to place on the market food which fails to meet the requirements of Article 2.1 of Commission Regulation 194/97 (“the Commission Regulation”) or to contravene Article 2.4 thereof (regulation 4);
- (c) apply section 9 of the Food Safety Act 1990 (“the Act”) with modifications, so as to require, by service of a notice, that food (other than “authorised lettuce or spinach”) which may contravene the requirements of Article 2.1 of Regulation 194/97 is to be removed for the purposes of inspection to a place having the proper facilities to do so and provide that it is an offence to knowingly contravene or fail to comply with such a notice (regulations 4 and 8);
- (d) provide that port health authorities are to have enforcement responsibilities (regulation 5);
- (e) modify the application of section 29 of the Act so as to provide that the taking of any samples of specified food must be in accordance with the methods described in Commission Directive 98/53 and require that samples of specified food are prepared and analysed in accordance with that Directive (regulation 6);
- (f) require records containing specified information to be kept and produced upon request (regulation 7);
- (g) amend the Food Safety (Sampling and Qualifications) Regulations 1990 (regulation 9); and
- (h) revoke the Aflatoxins in Nuts, Nut Products, Dried Figs and Dried Fig Products Regulations 1992 and make a consequential revocation of a provision of the Food Labelling Regulations 1996 (regulation 10).

A Regulatory Impact Assessment has been prepared in so far as these Regulations make provision for the enforcement and execution of Commission Regulation (EC) No. 1525/98 and implement Commission Directive 98/53/EC. The Assessment has been placed in the library of each House of Parliament and copies can be obtained from the Food Contaminants Division of the Ministry of Agriculture, Fisheries and Food, Ergon House c/o Nobel House, 17 Smith Square, London SW1P 3JR.