
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 2003.

The Regulations—

- (a) make provision for the continued enforcement and execution of Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs (“the Commission Regulation”) (as corrected by a corrigendum published on 30th November 2001) and as amended by Council Regulation (EC) No. 2375/2001, Commission Regulation (EC) No. 221/2002, Commission Regulation (EC) No. 257/2002, Commission Regulation (EC) No. 472/2002 (as corrected by corrigendum published on 23rd March 2002), Commission Regulation (EC) No. 563/2002 (as corrected by a corrigendum published on 14th June 2002), Commission Regulation (EC) No. 1425/2003, Commission Regulation (EC) No. 2174/2003, Commission Regulation (EC) No. 242/2004, Commission Regulation (EC) No. 455/2004 and Commission Regulation (EC) No. 684/2004;
- (b) implement the following Commission Directives:—
 - (i) Commission Directive 98/53/EC laying down the sampling methods and methods of analysis for the official control of the levels for certain contaminants in foodstuffs;
 - (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 (as corrected by a Commission Decision of 4th December 2001);
 - (iii) 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;
 - (iv) Commission Directive 2002/27/EC amending 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; and
 - (v) Commission Directive 2002/69/EC laying down the sampling methods and the methods of analysis for the official control of dioxins and determination of dioxin-like PCBs in foodstuffs (as corrected by a corrigendum published on 20th September 2002);
 - (vi) 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; and
 - (vii) 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;
- (c) subject to transitional provisions (in regulations 10 and 11), 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 spinach);
 - (ii) use foods containing such contaminants at such levels as ingredients in the production of certain foods;

Status: This is the original version (as it was originally made).

- (iii) mix foods which comply with the maximum levels referred to above with foods which do not;
- (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 treatments food not complying with the limits specified in the Commission Regulation (regulation 3);
- (d) specify the enforcement authorities (regulation 4);
- (e) prescribe sampling and analysis requirements in relation to foods subject to the Commission Regulation, and in so doing modify section 29 of the Food Safety Act 1990 so far as it applies to the taking of samples of the foods concerned (regulation 5);
- (f) provide a defence in relation to exports in implementation of Article 12 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (regulation 6);
- (g) provide for the application of specified provisions of the Food Safety Act 1990 for the purposes thereof (regulation 7);
- (h) provide for the re-export out of the European Community of food presented for import which fails to comply with certain requirements of regulation 3 but does not pose a serious risk to human health and the destruction of such food where it does pose such a risk (regulation 8);
- (i) establish a process by which certain food that has been presented for import may be placed on the market subject to conditions (regulation 9);
- (j) make consequential amendments to the Food Safety (Sampling and Qualifications) Regulations 1990 (regulation 12); and
- (k) revoke the Contaminants in Food (Scotland) Regulations 2003, and the Tin in Food Regulations 1992 in so far as they apply to Scotland (regulation 13).

The Regulations differ from the Contaminants in Food (Scotland) Regulations 2003 by—

- (a) introducing methods of sampling and analysis relating to the presence of patulin and tin in food (regulation 5(1)(f) and (g));
- (b) extending the transitional provisions to food containing patulin (regulation 11(b));
- (c) permitting certain food that has been presented for import to be placed on the market subject to conditions (regulation 9).

Four Regulatory Impact Assessments, which include a compliance cost assessment of the effects which these Regulations would have on business costs, have been prepared in respect of these Regulations and a copy of each has been placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency, 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.