
WELSH STATUTORY INSTRUMENTS

2006 No. 485 (W.55)

FOOD, WALES

The Contaminants in Food (Wales) Regulations 2006

Made - - - - 28 February 2006

Coming into force - - 1 March 2006

The National Assembly for Wales, in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 17(1) and (2), 26(1)(a), (2)(e) and (3), 31(1) and (2)(b), (c) and (f), and 48(1)(c) of the Food Safety Act 1990⁽¹⁾, and now vested in it⁽²⁾, having had regard, in accordance with section 48(4A) 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⁽³⁾, makes the following Regulations:

Title, commencement and application

1. The title of these Regulations is the Contaminants in Food (Wales) Regulations 2006, which come into force on 1 March 2006 and apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“authorised lettuce” (“*letus awdurdodedig*”) 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” (“*swyddog awdurdodedig*”) means any person who is authorised in writing, either generally or specifically, by a food authority or as the case may be a port authority to act in matters arising under these Regulations;

“authorised spinach” (“*sbigoglys awdurdodedig*”) 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;

(1) 1990 c. 16.

(2) Functions of the Secretary of State under the Food Safety Act 1990, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

(3) OJ No. L31, 1.2.2002, p.1, as last amended by Regulation (EC) No 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4.).

“the Commission Regulation” (“*Rheoliad y Comisiwn*”) means Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs(4) as corrected by a corrigendum published on 30 November 2001(5), and as amended by Council Regulation (EC) No. 2375/2001(6), Commission Regulation (EC) No. 221/2002(7), Commission Regulation (EC) No. 257/2002(8), Commission Regulation (EC) No. 472/2002(9) as corrected by a corrigendum published on 23 March 2002(10), Commission Regulation (EC) No. 563/2002(11) as corrected by a corrigendum published on 14 June 2002(12), Commission Regulation (EC) No. 1425/2003(13), Commission Regulation (EC) No. 2174/2003(14), Commission Regulation (EC) No. 242/2004(15), Commission Regulation (EC) No. 455/2004(16), Commission Regulation (EC) No. 655/2004(17), Commission Regulation (EC) No. 683/2004(18), Commission Regulation (EC) No.684/2004(19), Commission Regulation (EC) No. 78/2005(20), Commission Regulation (EC) No. 123/2005(21), Commission Regulation (EC) No. 208/2005(22) and Commission Regulations (EC) No. 1822/2005(23);

“Directive 98/53/EC” (“*Cyfarwyddeb 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(24) as amended by Commission Directive 2002/27/EC(25), Commission Directive 2003/121/EC(26) and Commission Directive 2004/43/EC(27);

“Directive 2001/22/EC” (“*Cyfarwyddeb 2001/22/EC*”) means 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(28) as corrected by Commission Decision 2001/873/EC(29) and as amended by Commission Directive 2005/4/EC(30);

“Directive 2002/26/EC” (“*Cyfarwyddeb 2002/26/EC*”) means Commission Directive 2002/26/EC laying down the sampling methods and the methods of analysis for the official control of

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- (4) OJ No. L77, 16.3.2001, p.1, as adopted by EEA Joint Committee Decision No. 81/2002 (OJ No. L266, 3.10.2002, p.30 EEA supplement No. 49, 3.10.2002).
- (5) OJ No. L313, 30.11.2001, p.60, as adopted by EEA Joint Committee Decision No. 81/2002.
- (6) OJ No. L321, 6.12.2001, p.1, as adopted by EEA Joint Committee Decision No. 81/2002.
- (7) OJ No. L37, 7.2.2002, p.4, as adopted by EEA Joint Committee Decision No. 139/2002 (OJ No. L19, 23.1.2003, p.3 and EEA supplement No. 5, 23.1.2003).
- (8) OJ No. L41, 13.2.2002, p.12, as adopted by EEA Joint Committee Decision No. 100/2002 (OJ No. L298, 31.10.2002, p.13 and EEA supplement No. 54, 31.10.2002, p.11).
- (9) OJ No. L75, 16.3.2002, p.18, as adopted by EEA Joint Committee Decision No. 161/2002 (OJ No. L38, 13.2.2003, p.16 and EEA supplement No. 9, 13.2.2003, p.13).
- (10) OJ No. L80, 23.3.2002, p.42.
- (11) OJ No. L86, 3.4.2002, p.5, as adopted by EEA Joint Committee Decision No. 161/2002.
- (12) OJ No. L155, 14.6.2002, p.63, as adopted by EEA Joint Committee Decision No. 161/2002.
- (13) OJ No. L203, 12.8.2003, p.1.
- (14) OJ No. L326, 13.12.2003, p.12.
- (15) OJ No. L42, 13.2.2004, p.3.
- (16) OJ No. L74, 12.3.2004, p.11.
- (17) OJ No. L104, 8.4.2004, p.48.
- (18) OJ No. L106, 15.4.2004, p.3.
- (19) OJ No. L106, 15.4.2004, p.6.
- (20) OJ No. L16, 20.1.2005, p.43.
- (21) OJ No. L25, 28.1.2005, p.3.
- (22) OJ No. L34, 8.2.2005, p.3.
- (23) OJ No. L293, 9.11.2005, p.11.
- (24) OJ No. L201, 17.7.1998, p.93, as adopted by EEA Joint Committee Decision No. 93/1999 (OJ No. L296, 23.11.2000, p.58).
- (25) OJ No. L75, 16.3.2002, p.44, as adopted by EEA Joint Committee Decision No. 161/2002.
- (26) OJ No. L332, 19.12.2003, p.38.
- (27) OJ No. L113, 20.4.2004, p.14.
- (28) OJ No. L77, 16.3.2001, p.14.
- (29) OJ No. L325, 8.12.2001, p.34.
- (30) OJ No. L19, 21.1.2005, p.50.

the levels of ochratoxin A in foodstuffs(31)) as amended by Commission Directive 2004/43/EC and Commission Directive 2005/5/EC(32));

“Directive 2002/69/EC” (“*Cyfarwyddeb 2002/69/EC*”) means 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(33) as corrected by a corrigendum published on 20 September 2002(34) and as amended by Commission Directive 2004/44/EC(35);

“Directive 2003/78/EC” (“*Cyfarwyddeb 2003/78/EC*”) means 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(36);

“Directive 2004/16/EC” (“*Cyfarwyddeb 2004/16/EC*”) means 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(37);

“Directive 2005/10/EC” (“*Cyfarwyddeb 2005/10/EC*”) means 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(38);

“food authority” (“*awdurdod bwyd*”) does not include a port health authority;

“port health authority” (“*awdurdod iechyd porthladd*”) means in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984(39), a port health authority for that district constituted by order under section 2(4) of that Act; and

“Regulation 882/2004” (“*Rheoliad 882/2004*”) means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(40).

(2) Any other expression used in these Regulations and in the Commission Regulation has 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—

- (a) that person 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, 2.1, 2.2 or 4.1 of the Commission Regulation, as read with Articles 1.2 and 4.3 of that Regulation; or
- (b) that person contravenes Article 2.3, 4.2 or 4a of the Commission Regulation;

(2) The Community provisions mentioned 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;

(31) OJ No. L75, 16.3.2002, p.38.

(32) OJ No. L27, 29.1.2005, p.38.

(33) OJ No. L209, 6.8.2002, p.5.

(34) OJ No. L252, 20.9.2002, p.40.

(35) OJ No. L113, 20.4.2004, p.17.

(36) OJ No. L203, 12.8.2003, p.40.

(37) OJ No. L42, 13.2.2004, p.16.

(38) OJ No. L34, 8.2.2005, p.15.

(39) 1984 c. 22.

(40) OJ No. L191, 28.5.2004, p.1.

- (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.

Enforcement

4. It is the duty of each port health authority to execute and enforce these Regulations within its district.

Procurement and analysis of samples

5.—(1) Where a sample is to be taken under section 29(b) or (d) of the Act of a food specified in Annex I to the Commission Regulation, that sample is to be taken in accordance with the methods of taking samples described or referred to—

Nitrate

- (a) (subject to the requirement specified in column 3 of Section 1 of Annex I to the Commission Regulation(41)), in the Annex to 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 and repealing Directive 79/700/EC(42), where the food concerned is of a description specified in Section 1 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation;

Aflatoxins

- (b) in Annex I to Directive 98/53/EC, where the food concerned is of a description specified in Section 2 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation;

Ochratoxin A

- (c) in Annex I to Directive 2002/26/EC, where the food concerned is of a description specified in Section 2 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation;

Patulin

- (d) in Annex I to Directive 2003/78/EC, where the food concerned is of a description specified in Section 2 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation;

Lead, cadmium, mercury and 3-MCPD

- (e) in Annex I to Directive 2001/22/EC, where the food concerned is of a description specified in Section 3 or 4 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation;

Dioxins and dioxin-like PCBs

(41) The requirement is that the minimum number of units required for a laboratory sample in such circumstances is 10.

(42) OJ No. L187, 16.7.2002, p.30.

- (f) in Annex I to Directive [2002/69/EC](#), where the food concerned is of a description specified in Section 5 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation;

Tin

- (g) in Annex I to Directive [2004/16/EC](#), where the food concerned is of a description specified in Section 6 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation; and

Benzo(a)pyrene

- (h) in Annex I to Directive [2005/10/EC](#), where the food concerned is of a description specified in Section 7 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation.

Preparation and analysis of samples for aflatoxins

(2) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (b) of that paragraph, and has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act the person who analyses the sample is to ensure that—

- (a) the sample is prepared in accordance with—
 - (i) paragraphs 1.1, 2 and 3 of Annex II to Directive [98/53/EC](#), and
 - (ii) in the case of whole nuts, paragraph 1.2 of that Annex;
- (b) any analysis of the sample is carried out in accordance with methods of analysis which meet the criteria specified in paragraph 4.3 of Annex II to Directive [98/53/EC](#) as read with the notes to that paragraph;
- (c) any analysis of the sample is carried out by a laboratory which has been designated in accordance with the requirements of Article 12.2 of Regulation 882/2004;
- (d) the reporting of the results 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.

Preparation and analysis of samples for lead, cadmium, mercury and 3-MPCD

(3) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (e) of that paragraph, and has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act the person who analyses the sample is to ensure that—

- (a) the sample is prepared in accordance with paragraphs 1 and 2 of Annex II to Directive [2001/22/EC](#) as read, in the case of paragraph 2, with the note to that paragraph;
- (b) any analysis of the sample is carried out in accordance with methods of analysis which—
 - (i) in the case of analysis for lead (other than in wine), mercury or cadmium, meet the criteria specified in paragraph 3.3.1 (as read with paragraph 3.3.3) of Annex II to Directive [2001/22/EC](#),
 - (ii) in the case of analysis for lead in wine, comply with the second sub-paragraph of paragraph 3.2 of that Annex, and
 - (iii) in the case of analysis for 3-MCPD, meet the criteria specified in paragraph 3.3.2 (as read with paragraph 3.3.3) of that Annex and as read with the note to that paragraph;

- (c) any analysis of the sample is carried out by a laboratory which has been designated in accordance with the requirements of Article 12.2 of Regulation 882/2004;
- (d) any analysis of the sample is carried out in such a way as to comply with the first and third sub-paragraphs of paragraph 3.4 of Annex II to Directive 2001/22/EC as read in the case of the third sub-paragraph with the note to that sub-paragraph; and
- (e) the reporting of the results of the analysis of that sample—
 - (i) makes use of the definitions in paragraph 3.1 of Annex II to Directive 2001/22/EC as read with the note to that paragraph, and
 - (ii) is in accordance with the second and fourth sub-paragraphs of paragraph 3.4 and with paragraph 3.6 of that Annex.

Preparation and analysis of samples for ochratoxin A

(4) Where, pursuant to section 29(b) or (d) of the Act as read with paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (c) of that paragraph, and has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act the person who analyses the sample must ensure that—

- (a) the sample is prepared in accordance with paragraphs 1 to 3 of Annex II to Directive 2002/26/EC;
- (b) any analysis of the sample is carried out in accordance with methods of analysis which meet the criteria specified in paragraph 4.3 of Annex II to Directive 2002/26/EC;
- (c) any analysis of the sample is carried out by a laboratory which has been designated in accordance with the requirements of Article 12.2 of Regulation 882/2004 ; and
- (d) the reporting of the results of the analysis of that sample—
 - (i) makes use of the definitions in paragraph 4.1 of Annex II to Directive 2002/26/EC, and
 - (ii) is in accordance with paragraph 4.4 of that Annex.

Preparation and analysis of samples for dioxins and dioxin-like PCBs

(5) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (f) of that paragraph, and has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act the person who analyses the sample is to ensure that—

- (a) the sample is prepared in accordance with paragraph 3 of Annex II to Directive 2002/69/EC, as read with paragraphs 1 and 2 of that Annex;
- (b) any analysis of the sample is carried out in accordance with methods of analysis which meet criteria specified in paragraphs 5, 6 and 7 of Annex II to Directive 2002/69/EC, as read with paragraphs 1 and 2 of that Annex;
- (c) any analysis of the sample is carried out by a laboratory which—
 - (i) complies with the first four sub-paragraphs of paragraph 4 of Annex II to Directive 2002/69/EC, and
 - (ii) has been designated in accordance with the requirements of Article 12.2 of Regulation 882/2004; and
- (d) the reporting of the results of the analysis of that sample is in accordance with paragraph 8 of Annex II to Directive 2002/69/EC.

Preparation and analysis of samples for patulin

(6) Where, pursuant to section 29(b) or (d) of the Act as read with paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (d) of that paragraph, and has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act the person who analyses the sample is to ensure that—

- (a) the sample is prepared in accordance with paragraphs 1 to 3 of Annex II to Directive [2003/78/EC](#);
- (b) any analysis of the sample is carried out in accordance with methods of analysis which meet the criteria specified in paragraph 4.3 of Annex II to Directive [2003/78/EC](#) as read with the notes to that paragraph;
- (c) any analysis of the sample is carried out by a laboratory which has been designated in accordance with the requirements of Article 12.2 of Regulation 882/2004 ; and
- (d) the reporting of the results of the analysis of that sample—
 - (i) makes use of the definitions in paragraph 4.1 of Annex II to Directive [2003/78 / EC](#), and
 - (ii) is in accordance with paragraph 4.4 of that Annex.

Preparation and analysis of samples for tin

(7) Where, pursuant to section 29(b) or (d) of the Act as read with paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (g) of that paragraph, and has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act the person who analyses the sample is to ensure that—

- (a) the sample is prepared in accordance with paragraphs 1, 2 and 3, and that section of paragraph 4.6 headed “Sample preparation”, of Annex II to Directive [2004/16/EC](#);
- (b) any analysis of the sample is carried out in accordance with methods of analysis which meet the criteria specified in paragraphs 4.3 and 4.3.1 of Annex II to Directive [2004/16/EC](#);
- (c) any analysis of the sample is carried out by a laboratory which has been designated in accordance with the requirements of Article 12.2 of Regulation 882/2004 and complies with that section of paragraph 4.6 of Annex II to Directive [2004/16/EC](#) headed “Internal quality control”; and
- (d) the reporting of the results of the analysis of that sample—
 - (i) makes use of the definitions in paragraph 4.1 of Annex II to Directive [2004/16/EC](#), and
 - (ii) is in accordance with paragraph 4.4 of that Annex.

Preparation and analysis of samples for benzo(a)pyrene

(8) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (h) of that paragraph and has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act, the person who analyses the sample is to ensure that—

- (a) the sample is prepared in accordance with paragraphs 1 to 3 of Annex II to Directive [2005/10/EC](#);
- (b) any analysis of the sample is carried out in accordance with methods of analysis which meet the criteria specified in paragraphs 4.3 and 4.3.1 of Annex II to Directive [2005/10/EC](#);
- (c) any analysis of the sample is carried out by a laboratory which has been designated in accordance with the requirements of Article 12.2 of Regulation 882/2004 and complies

with that section of paragraph 4.6 of Annex II to Directive [2005/10/EC](#) headed “Internal quality control”; and

- (d) the reporting of the results of the analysis of that sample—
 - (i) makes use of the definitions in paragraph 4.1 of Annex II to Directive [2005/10/EC](#), and
 - (ii) is in accordance with paragraph 4.4 of that Annex.

Application of various sections of the Food Safety Act 1990

6.—(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof is to 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 purpose of section 14 or 15;
- (d) section 30(8) (which relates to documentary evidence);
- (e) section 33(1) (obstruction etc. of officers);
- (f) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above” is to be deemed to be a reference to any such requirement as is mentioned in section 33(1)(b) as applied by sub-paragraph (e);
- (g) section 35(1) (punishment of offences), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (e);
- (h) section 35(2) and (3), insofar as it relates to offences under section 33(2) as applied by sub-paragraph (f);
- (i) section 36 (offences by bodies corporate); and
- (j) 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) applies for the purposes of these Regulations as if it read as follows—

“9.—(1) An authorised officer of a food authority or a port health 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 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 (Wales) Regulations 2006.

- (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 the sampling required by Directive [98/53/EC](#), Directive [2001/22/EC](#), Directive [2002/26/EC](#), Directive [2002/69/EC](#), Directive [2003/78/EC](#), Directive [2004/16/EC](#) or Directive [2005/10/EC](#), as appropriate; or
 - (b) seize the food and remove it in order to have it dealt with by a justice of the peace.

(3) Where the authorised officer exercises the power conferred by subsection (2)(a) above, the authorised officer is as soon as is reasonably practicable and in any event within 21 days, to determine whether or not the authorised officer is satisfied that the food complies with the requirements of regulation 3(1)(a) of the above Regulations, as appropriate and—

- (a) if the authorised officer is so satisfied, forthwith withdraw the notice;
- (b) if the authorised officer is not so satisfied, must seize the food and remove it in order to have it dealt with by a justice of the peace.

(4) Where an authorised officer exercises the powers conferred by subsection (2)(b) or (3)(b) above, the authorised officer is to inform the person in charge of the food of the intention to have it dealt with by a justice of the peace and—

- (a) any person who under regulation 3(1)(a) of the above Regulations might be liable to a prosecution in respect of the food is, if that person attends before the justice of the peace by whom the food falls to be dealt with, entitled to be heard and to call witnesses; and
- (b) that justice of the peace may, but need not, be a member of the court before which any person is proceeded against for an offence consisting of a contravention of regulation 3(1)(a) of the above Regulations in relation to that food.

(5) If it appears to a justice of the peace, on the basis of such evidence as he or she considers appropriate in the circumstances, that any food falling to be dealt with by him or her under this section fails to comply with the requirements of regulation 3(1)(a) of the above Regulations he or she must 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 justice of the peace by whom any food falls to be dealt with under this section refuses to condemn it, the food authority or, as the case may be, port health authority, is to 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) above must be determined by arbitration.

(8) Any person who knowingly contravenes the requirements of a notice under paragraph (a) of subsection (2) above is 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”, “human consumption”, “placing on the market”, “Directive 98/53/EC”, “Directive 2001/22/EC”, “Directive 2002/26/EC”, “Directive 2002/69/EC”, “Directive 2003/78/EC”, “Directive 2004/16/EC” and “Directive 2005/10/EC” 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), are, for those purposes, to bear the meanings that those expressions respectively bear in these Regulations.

Consequential amendments

7. In Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 1990⁽⁴³⁾ in so far as they apply to Wales (provisions to which those Regulations do not apply) for the entry relating to the Contaminants in Food (Wales) Regulations 2003 there is to be substituted the following entry—

(43) S.I. 1990/2463; relevant amending instruments are S.I. 1999/1603, S.I. 2002/1886 (W.195) and S.I. 2003/1721 (W.188).

“The Contaminants in Food (Wales) Regulations 2006 (to the extent that a sample falls to be prepared and analysed in accordance with regulation 5 of those Regulations)”	S.I.2006/485 (W.55)”
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Revocations

8. The Contaminants in Food (Wales) Regulations 2005(44) and the Contaminants in Food (Wales) (Amendment) Regulations 2005(45) are revoked.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(46)

28 February 2006

D. Elis-Thomas
The Presiding Officer of the National Assembly

(44) S.I. 2005/364 (W.31).
(45) S.I. 2005/1629 (W.123).
(46) 1998 c. 38.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply to Wales and revoke and re-enact with changes the Contaminants in Food (Wales) Regulations 2005 (S.I. 2005/364) as amended—

- (a) make provision for the execution and enforcement of Commission Regulation (EC) No. 466/2001 setting maximum levels for contaminants in foodstuffs (OJ No. L77, 16.3.2001, p.1, as corrected and amended) (“the Commission Regulation”); and
- (b) implement—
 - (i) Commission Directive 98/53/EC laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminant in foodstuffs (OJ No. L201, 17.7.98, p.93, as amended),
 - (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 (OJ No. L77, 16.3.2001, p.14, as corrected and amended),
 - (iii) Commission Directive 2002/26/EC laying down the sampling methods and the methods of analysis for the official control of levels of ochratoxin A in foodstuffs (OJ No. L75, 16.3.2002, p.38, as amended),
 - (iv) 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 (OJ No. L209, 6.8.2002, p.5, as corrected and amended),
 - (v) 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 (OJ No. L203, 12.8.2003, p.40),
 - (vi) 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 (OJ No. L42, 13.2.2004, p.16), and
 - (vii) 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 (OJ No. L34, 8.2.2005, p.15).

2. These 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,

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

- (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) prescribe requirements in relation to the methods sampling and analysis of foods subject to the Commission Regulation (regulation 5);
- (d) provide for the application of specified provisions of the Food Safety Act 1990 for the purposes these Regulations (regulation 6);
- (e) make consequential amendments to the Food Safety (Sampling and Qualifications) Regulations 1990 in so far as they apply in relation to Wales 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 provisions implemented in these Regulations (regulation 7).

3. A regulatory appraisal has been prepared for these Regulations and has been placed in the Library of the National Assembly for Wales together with a transposition note setting out how the main elements of the Commission Regulations referred to in paragraph 1 above are transposed into domestic law by these Regulations. Copies may be obtained from the Food Standards Agency, 11th Floor, Southgate House, Cardiff, CF10 1EW.