



CYNULLIAD CENEDLAETHOL CYMRU

NATIONAL ASSEMBLY FOR WALES

OFFERYNNAU STATUDOL

STATUTORY INSTRUMENTS

2005 Rhif 364 (Cy.31)

2005 No. 364 (W.31)

BWYD, CYMRU

FOOD, WALES

**Rheoliadau Halogion mewn Bwyd
(Cymru) 2005**

**The Contaminants in Food (Wales)
Regulations 2005**

NODYN ESBONIADOL

EXPLANATORY NOTE

(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)

(This note is not part of the Regulations)

1. Mae'r Rheoliadau hyn, sydd yn gymwys o ran Cymru yn unig, ac yn dirymu Rheoliadau Halogion mewn Bwyd (Cymru) 2003 (O.S. 2003/1721) ac yn eu haildeddfu gyda newidiadau-

1. These Regulations, which apply in relation to Wales only and revoke and re-enact with changes the Contaminants in Food (Wales) Regulations 2003 (S.I. 2003/1721) -

- (a) yn darparu ar gyfer gweithredu a gorfodi Rheoliad y Comisiwn (EC) Rhif 466/2001 sy'n gosod lefelau uchaf ar gyfer halogion mewn bwydydd (OJ Rhif L77, 16.3.2001, t.1, fel y'i cywirwyd a'i diwygiwyd) ("Rheoliad y Comisiwn"); a
- (b) yn rhoi'r canlynol ar waith-
 - (i) Cyfarwyddeb y Comisiwn 98/53/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r halogion penodol mewn bwydydd (OJ Rhif L201, 17.7.1998, t.93, fel y'i diwygiwyd),
 - (ii) Cyfarwyddeb y Comisiwn 2001/22/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r plwm, cadmiwm, mercwri a 3-MCPD sydd mewn bwydydd (OJ Rhif L77, 16.3.2001, t.14, fel y'i cywirwyd),
 - (iii) Cyfarwyddeb y Comisiwn 2002/26/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r ochratoxin A mewn bwydydd (OJ Rhif L75, 16.3.2002, t.38),

- (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),
 - (iii) Commission Directive 2002/26/EC laying down the sampling methods and the methods of analysis of the official control of levels of ochratoxin A in foodstuffs (OJ No. L75, 16.3.2002, p.38),

- (iv) Cyfarwyddeb y Comisiwn 2002/69/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol ddeuocsinau a chanfod PCBs sy'n debyg i ddeuocsinau mewn bwydydd (OJ Rhif L209, 6.8.2002, t.5, fel y'i cywirwyd a'i diwygiwyd),
- (v) Cyfarwyddeb y Comisiwn 2003/78/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r patwlin sydd mewn bwydydd (OJ Rhif L203, 12.8.2003, t.40), a
- (vi) Cyfarwyddeb y Comisiwn 2004/16/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r tun sydd mewn bwydydd tun (OJ Rhif L42, 13.2.2004, t.16).

2. Mae'r Rheoliadau hyn-

(a) yn darparu mai tramgwydd yw-

- (i) rhoi rhai mathau o fwydydd ar y farchnad os ydynt yn cynnwys unrhyw fath o halogion a nodwyd yn Rheoliad y Comisiwn, a hynny ar lefelau sy'n uwch na'r rhai a nodwyd (yn ddarostyngedig i ran-ddirymiad sy'n gymwys i rai mathau o letys a sbigoglys),
- (ii) defnyddio bwyd sy'n cynnwys yr halogion hynny mewn lefelau o'r fath fel cynhwysion wrth gynhyrchu rhai bwydydd,
- (iii) cymysgu bwydydd sy'n cydymffurfio â'r uchafsymiau y cyfeirir atynt uchod gyda bwydydd nad ydynt,
- (iv) cymysgu bwydydd y mae Rheoliad y Comisiwn yn ymwneud â hwy ac sydd wedi'u bwriadu i'w bwyta'n uniongyrchol gyda bwydydd y mae Rheoliad y Comisiwn yn ymwneud â hwy ac y bwriedir eu didoli neu eu trin mewn ffordd arall cyn iddynt gael eu bwyta, neu
- (v) dadwenwyno bwyd nad yw'n cydymffurfio â'r terfynau a nodwyd yn Rheoliad y Comisiwn gan ddefnyddio triniaethau cemegol (rheoliad 3);

(b) yn pennu'r awdurdodau gorfodi (rheoliad 4);

- (c) yn rhagnodi gofynion o ran dadansoddi samplau bwydydd sy'n ddarostyngedig i Rheoliad y Comisiwn, ac, wrth wneud hynny, yn addasu adran 29 o Ddeddf Diogelwch Bwyd 1990 i'r graddau y mae'n gymwys i gymryd samplau o'r bwydydd dan sylw (rheoliad 5);

- (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), and
- (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).

2. These Regulations-

(a) 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 food containing such contaminants at such levels as ingredients in the production of certain foods,
- (iii) mix foods which comply with the maximum 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 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 analysis of samples of foods subject to the Commission Regulation, and in doing so modify section 29 of the Food Safety Act 1990 in its application to the taking of samples of the foods concerned (regulation 5);

- (ch) yn darparu amddiffyniad mewn perthynas ag allforion wrth weithredu Erthyglau 2 a 3 o Gyfarwyddeb y Cyngor 89/397/EEC (OJ Rhif L186, 30.6.89, t.23) ar reoli bwydydd yn swyddogol, fel y cânt eu darllen gyda'r nawfed croniciad i'r Gyfarwyddeb honno (rheoliad 6);
- (d) yn darparu ar gyfer cymhwyso darpariaethau penodol o Ddeddf Diogelwch Bwyd 1990 at y dibenion hynny (rheoliad 7);
- (dd) yn ddarostyngedig i reoliad 9, yn darparu ar gyfer ailallforio bwydydd a fewnforiwyd yn groes i ofynion penodol rheoliad 3 i wladwriaethau nad ydynt yn Aelod-wladwriaethau, neu, mewn achosion penodol, yn darparu ar gyfer dinistrio'r bwydydd hynny (rheoliad 8);
- (e) yn sefydlu prosesu fel bod modd rhoi bwyd ar y farchnad er y byddai fel arall wedi'i ailallforio neu wedi'i ddinistrio o dan reoliad 8 (rheoliad 9);
- (f) yn cynnwys darpariaethau trosiannol (rheoliadau 10 ac 11); ac
- (ff) yn gwneud diwygiadau canlyniadol i Reoliadau Diogelwch Bwyd (Samplo a Chymwysterau) 1990 i'r graddau y maent yn gymwys o ran Cymru (rheoliad 12).

3. Mae'r Rheoliadau hyn hefyd yn dirymu Rheoliadau Tun mewn Bwyd 1992 i'r graddau y maent yn gymwys o ran Cymru (rheoliad 13).

4. Paratowyd arfarniad rheoliadol ar gyfer y Rheoliadau hyn a'i osod yn Llyfrgell Cynulliad Cenedlaethol Cymru, ynghyd â nodyn trosi sy'n nodi sut y mae prif elfennau Cyfarwyddeb y Comisiwn y cyfeiriwyd ati ym mharagraff 1 uchod yn cael eu trosi i'r gyfraith ddomestig gan y Rheoliadau hyn. Gellir cael copïau oddi wrth yr Asiantaeth Safonau Bwyd, Llawr 11, Ty Southgate, Caerdydd, CF10 1EW.

- (d) provide a defence in relation to exports in implementation of Articles 2 and 3 of Council Directive 89/397/EEC on the official control of foodstuffs, as read with the ninth recital to that Directive (OJ No. L186, 30.6.89, p.23) (regulation 6);
- (e) provide for the application of specified provisions of the Food Safety Act 1990 for the purposes thereof (regulation 7);
- (f) subject to regulation 9, provide for the re-export to non-member States or in certain cases the destruction of imported food that contravenes certain requirements of regulation 3 (regulation 8);
- (g) establish a process by which food that would otherwise have to be re-exported or destroyed under regulation 8 can nevertheless be placed on the market (regulation 9);
- (h) include transitional provisions (regulations 10 and 11); and
- (i) make consequential amendments to the Food Safety (Sampling and Qualifications) Regulations 1990 in so far as they apply in relation to Wales (regulation 12).

3. These Regulations also revoke the Tin in Food Regulations 1992 in so far as they apply in relation to Wales (regulation 13).

4. A regulatory appraisal has been prepared for these Regulations and placed in the library of the National Assembly for Wales together with a transposition note setting out how the main elements of the Commission Directives 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.

2005 Rhif 364 (Cy.31)**2005 No. 364 (W.31)****BWYD, CYMRU****FOOD, WALES****Rheoliadau Halogion mewn Bwyd
(Cymru) 2005****The Contaminants in Food (Wales)
Regulations 2005***Wedi'u gwneud* 22 Chwefror 2005*Made* 22 February 2005*Yn dod i rym* 1 Mawrth 2005*Coming into force* 1 March 2005

Mae Cynulliad Cenedlaethol Cymru, drwy arfer y pwerau a roddwyd gan adrannau 16(1)(a), (e) ac (f), 17(1) a (2), 26(1)(a), (2)(e) a (3), a 48(1) o Ddeddf Diogelwch Bwyd 1990(1), ac a freiniwyd ynddo bellach(2) ac ar ôl iddo roi sylw yn unol ag adran 48(4A) o'r Ddeddf honno i gyngor perthnasol a roddwyd gan yr Asiantaeth Safonau Bwyd, ac ar ôl ymgynghori fel sy'n ofynnol gan Erthygl 9 o Reoliad (EC) Rhif 178/2002 o Senedd Ewrop a'r Cyngor, sy'n pennu egwyddorion cyffredinol a gofynion cyfraith bwyd, yn sefydlu Awdurdod Diogelwch Bwyd Ewrop ac yn pennu gweithdrefnau o ran materion diogelwch bwyd(3) ac, yn unol ag adran 48(4) a (4B) o'r Ddeddf honno, yn gwneud y Rheoliadau a ganlyn:

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) and 48(1) 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), and in accordance with section 48(4) and (4B) of that Act, makes the following Regulations:

Enwi, cychwyn a chymhwysio

1. Enw'r Rheoliadau hyn yw Rheoliadau Halogion mewn Bwyd (Cymru) 2005, deuant i rym ar 1 Mawrth 2005 ac maent yn gymwys o ran Cymru yn unig.

Title, commencement and application

1. These Regulations may be cited as the Contaminants in Food (Wales) Regulations 2005, come into force on 1 March 2005 and apply in relation to Wales only.

Dehongli

2.-(1) Yn y Rheoliadau hyn-

nid yw "awdurdod bwyd" ("*food authority*") yn cynnwys awdurdod iechyd porthladd;

ystyr "awdurdod iechyd porthladd" ("*port health authority*"), o ran unrhyw ardal iechyd porthladd a gyfansoddwyd drwy orchymyn o dan adran 2(3) o Ddeddf Iechyd y Cyhoedd (Rheoli Afiechydon)

Interpretation

2.-(1) In these Regulations -

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

"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 is grown in the United Kingdom

(1) 1990 p.16.

(2) Trosglwyddwyd swyddogaethau'r Ysgrifennydd Gwladol o dan Ddeddf Diogelwch Bwyd 1990, i'r graddau y maent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru gan Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S. 1999/672).

(3) OJ Rhif L31, 1.2.2002, t.1.

(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.

1984, yw awdurdod iechyd porthladd ar gyfer yr ardal honno a gyfansoddwyd drwy orchymyn o dan adran 2(4) o'r Ddeddf honno;

ystyr "Cyfarwyddeb 85/591/EEC" ("*Directive 85/591/EEC*") yw Cyfarwyddeb y Cyngor 85/591/EEC sy'n ymwneud â chyflwyno dulliau'r Gymuned o samplu a dadansoddi ar gyfer monitro bwydydd y bwriedir i bobl eu bwyta(1);

ystyr "Cyfarwyddeb 93/99/EEC" ("*Directive 93/99/EEC*") yw Cyfarwyddeb y Cyngor 93/99/EEC(2) am y math o fesurau ychwanegol sy'n ymwneud â rheoli bwydydd yn swyddogol;

ystyr "Cyfarwyddeb 98/53/EC" ("*Directive 98/53/EC*") yw Cyfarwyddeb y Comisiwn 98/53/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r halogion penodol sydd mewn bwydydd(3) fel y'i diwygiwyd gan Gyfarwyddeb y Comisiwn 2002/27/EC(4) a Chyfarwyddeb y Comisiwn 2003/121/EC(5);

ystyr "Cyfarwyddeb 2001/22/EC" ("*Directive 2001/22/EC*") yw Cyfarwyddeb y Comisiwn 2001/22/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r plwm, cadmiwm, mercwri a'r 3-MPCD sydd mewn bwydydd(6) fel y'i cywirwyd gan Benderfyniad y Comisiwn 2001/873/EC(7);

in accordance with the proviso to Article 3.1 of that Regulation and is intended for human consumption there;

"the Commission Regulation" ("*Rheoliad y Comisiwn*") means Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs(1) as corrected by a corrigendum published on 30 November 2001(2), and as amended by Council Regulation (EC) No. 2375/2001(3), Commission Regulation (EC) No. 221/2002(4), Commission Regulation (EC) No. 257/2002(5), Commission Regulation (EC) No. 472/2002(6) as corrected by a corrigendum published on 23 March 2002(7), Commission Regulation (EC) No. 563/2002(8) as corrected by a corrigendum published on 14 June 2002(9), Commission Regulation (EC) No. 1425/2003(10), Commission Regulation (EC) No. 2174/2003(11), Commission Regulation (EC) No. 242/2004(12), Commission Regulation (EC) No. 455/2004(13) and Commission Regulation (EC) No.684/2004(14);

"Directive 85/591/EEC" ("*Cyfarwyddeb 85/591/EEC*") means Council Directive 85/591/EEC concerning the introduction of Community methods of sampling and analysis for

(1) OJ Rhif L372, 31.12.1985, t.50.

(2) OJ Rhif L290, 24.11.1993, t.14.

(3) OJ Rhif L201, 17.7.1998, t.93, fel y'i mabwysiadwyd drwy Benderfyniad Cyd-bwyllgor yr AEE Rhif 93/1999 (OJ Rhif L296 23.11.2000, t.58)

(4) OJ Rhif L75, 16.3.2002, t.44, fel y'i mabwysiadwyd drwy Benderfyniad Cyd-bwyllgor yr AEE Rhif 161/2002.

(5) OJ Rhif L332, 19.12.2003, t.38.

(6) OJ Rhif L77, 16.3.2001, t.14.

(7) OJ Rhif L325, 8.12.2001, t.34.

(1) 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).

(2) OJ No. L313, 30.11.2001, p.60, as adopted by EEA Joint Committee Decision No. 81/2002.

(3) OJ No. L321, 6.12.2001, p.1, as adopted by EEA Joint Committee Decision No. 81/2002.

(4) 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).

(5) 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).

(6) 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).

(7) OJ No. L80, 23.3.2002, p.42.

(8) OJ No. L86, 3.4.2002, p.5, as adopted by EEA Joint Committee Decision No. 161/2002.

(9) OJ No. L155, 14.6.2002, p.63, as adopted by EEA Joint Committee Decision No. 161/2002.

(10) OJ No. L203, 12.8.2003, p.1.

(11) OJ No. L326, 13.12.2003, p.12.

(12) OJ No. L42, 13.2.2004, p.3

(13) OJ No. L74, 12.3.2004, p.11.

(14) OJ No. L106, 15.4.2004, p. 6.

ystyr "Cyfarwyddeb 2002/26/EC" ("*Directive 2002/26/EC*") yw Cyfarwyddeb y Comisiwn 2002/26/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r ocratocsin A sydd mewn bwydydd(1);

ystyr "Cyfarwyddeb 2002/69/EC" ("*Directive 2002/69/EC*") yw Cyfarwyddeb y Comisiwn 2002/69/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli deuocsinau yn swyddogol a phenderfynu ar lefelau PCBs fel deuocsinau sydd mewn bwydydd(2) fel y'i cywirwyd drwy gywiriad a gyhoeddwyd ar 20 Medi 2002(3) ac a ddiwygiwyd gan Gyfarwyddeb y Comisiwn 2004/44/EC(4);

ystyr "Cyfarwyddeb 2003/78/EC" ("*Directive 2003/78/EC*") yw Cyfarwyddeb y Comisiwn 2003/78/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r patwlin sydd mewn bwydydd(5);

ystyr "Cyfarwyddeb 2004/16/EC" ("*Directive 2004/16/EC*") yw Cyfarwyddeb y Comisiwn 2004/16/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r tun sydd mewn bwydydd tun(6);

ystyr "y Ddeddf" ("*the Act*") yw Deddf Diogelwch Bwyd 1990;

ystyr "Gwladwriaeth AEE" ("*EEA State*") yw Aelod-wladwriaeth, Norwy, Gwlad yr Iâ neu Liechtenstein;

ystyr "Rheoliad 178/2002" ("*Regulation 178/2002*") yw Rheoliad (EC) Rhif 178/2002 o Senedd Ewrop a'r Cyngor sy'n gosod egwyddorion a gofynion cyffredinol cyfraith bwyd, yn sefydlu Awdurdod Diogelwch Bwyd Ewrop ac yn gosod gweithdrefnau o ran materion diogelwch bwyd, fel y'i diwygiwyd ddiwethaf gan Reoliad (EC) Rhif 1642/2003 o Senedd Ewrop a'r Cyngor;

ystyr "Rheoliad y Comisiwn" ("*the Commission Regulation*") yw Rheoliad y Comisiwn (EC) Rhif 466/2001, sy'n gosod lefelau uchaf yr halogion penodol mewn bwydydd(7) fel y'i cywirwyd drwy gywiriad a gyhoeddwyd ar 30 Tachwedd 2001(8),

the monitoring of foodstuffs intended for human consumption(1);

"Directive 93/99/EEC" ("*Cyfarwyddeb 93/99/EEC*") means Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs(2);

"Directive 98/53/EC" means ("*Cyfarwyddeb 98/53/EC*") 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(3) as amended by Commission Directive 2002/27/EC(4) and Commission Directive 2003/121/EC(5);

"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(6) as corrected by Commission Decision 2001/873/EC(7);

"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 the levels of Ochratoxin A in foodstuffs(8);

"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(9) as corrected by a corrigendum published on 20 September 2002(10) and as amended by Commission Directive 2004/44/EC(11);

"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(12);

"Directive 2004/16/EC" ("*Cyfarwyddeb 2004/16/EC*") means Commission Directive 2004/16/EC laying down the sampling methods

(8) OJ Rhif L75, 16.3.2002, t.38.

(2) OJ Rhif L209, 6.8.2002, t.5.

(3) OJ Rhif L252, 20.9.2002, t.40.

(4) OJ Rhif L113, 20.4.2004, t.17.

(5) OJ Rhif L203, 12.8.2003, t.40.

(6) OJ Rhif L42, 13.2.2004, t.16.

(7) OJ Rhif L77, 16.3.2001, t.1, fel y'i mabwysiadwyd drwy Benderfyniad Cyd-bwyllgor yr AEE Rhif 81/2002 (OJ Rhif L266, 3.10.2002, t.30 AEE atodiad rhif 49, 3.10.2002).

(8) OJ Rhif L313, 30.11.2001, t.60, fel y'i mabwysiadwyd drwy Benderfyniad Cyd-bwyllgor yr AEE Rhif 81/2002.

(1) OJ No. L372, 31.12.1985, p.50.

(2) 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)

(3) OJ No. L290, 24.11.1993, p.14.

(4) OJ No. L75, 16.3.2002, p.44, as adopted by EEA Joint Committee Decision No. 161/2002.

(5) OJ No. L332, 19.12.2003, p.38.

(6) OJ No. L77, 16.3.2001, p.14.

(7) OJ No. L325, 8.12.2001, p.34.

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

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

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

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

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

ac fel y'i diwygiwyd gan Reoliad y Cyngor (EC) Rhif 2375/2001(1), Rheoliad y Comisiwn (EC) Rhif 221/2002(2), Rheoliad y Comisiwn (EC) Rhif 257/2002(3), Rheoliad y Comisiwn (EC) Rhif 472/2002(4) fel y'i cywirwyd drwy gywiriad a gyhoeddwyd ar 23 Mawrth 2002(5), Rheoliad y Comisiwn (EC) Rhif 563/2002(6) fel y'i cywirwyd drwy gywiriad a gyhoeddwyd ar 14 Mehefin 2002(7), Rheoliad y Comisiwn (EC) Rhif 1425/2003(8), Rheoliad y Comisiwn (EC) Rhif 2174/2003(9), Rheoliad y Comisiwn (EC) Rhif 242/2004(10), Rheoliad y Comisiwn (EC) Rhif 455/2004(11) a Rheoliad y Comisiwn (EC) Rhif 684/2004(12); ac

ystyr "sbigoglys awdurdodedig" ("*authorised spinach*") yw sbigoglys o'r math a nodir ym mhwynt 1.1 o adran 1 o Atodiad I i Reoliad y Comisiwn, ac a dyfir yn y Deyrnas Unedig yn unol â'r amod i Erthygl 3.1 o'r Rheoliad hwnnw a chydâ'r bwriad o gael ei fwyta gan bobl yno.

(2) Mae i ymadroddion eraill a ddefnyddir yn y Rheoliadau hyn ac yn Rheoliad y Comisiwn yr un ystyr ag a roddir i'r ymadroddion Saesneg cyfatebol yn Rheoliad y Comisiwn.

Tramgyddau a chosbau

3. Yn ddarostyngedig i reoliadau 6, 10 ac 11, bydd person yn euog o dramgydd ac yn agored, o'i gollfarnu'n ddiannod, i ddirwy heb fod yn fwy na lefel 5 ar y raddfa safonol os yw-

(a) yn gosod unrhyw fwyd ar y farchnad (heblaw am sbigoglys awdurdodedig), a gwmpesir gan Erthygl 1.1, 2.1, 2.2 neu 4.1 o Reoliad y Comisiwn, fel y'u darllenir ar y cyd ag Erthyglau 1.2 a 4.3 o'r Rheoliad hwnnw, ond nad yw'n bodloni gofynion yr Erthyglau hynny, neu

and the methods of analysis for the official control of the levels of tin in canned foods(1);

"EEA State" ("*Gwladwriaeth AEE*") means a Member State, Norway, Iceland or Liechtenstein;

"food authority" ("*awdurdod bwyd*") does not include a port health authority; and

"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, a port health authority for that district constituted by order under section 2(4) of that Act.

"Regulation 178/2002" ("*Rheoliad 178/2002*") means 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 as last amended by Regulation (EC) No.1642/2003 of the European Parliament and of the Council.

(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. Subject to regulations 6, 10 and 11, 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) he or she places on the market any food (other than 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

(1) OJ Rhif L321, 6.12.2001, t.1, fel y'i mabwysiadwyd drwy Benderfyniad Cyd-bwyllgor yr AEE Rhif 81/2002.

(2) OJ Rhif L37, 7.2.2002, t.4, fel y'i mabwysiadwyd drwy Benderfyniad Cyd-bwyllgor yr AEE Rhif 139/2002 (OJ Rhif 19, 23.1.2003, t.3 ac atodiad AEE Rhif 5, 23.1.2003).

(3) OJ Rhif L41, 13.2.2002, t.12, fel y'i mabwysiadwyd drwy Benderfyniad Cyd-bwyllgor yr AEE Rhif 100/2002 (OJ Rhif L298, 31.10.2002, t.13 ac atodiad AEE Rhif 54, 31.10.2002, t.11).

(4) OJ Rhif L75, 16.3.2002, t.18, fel y'i mabwysiadwyd drwy Benderfyniad Cyd-bwyllgor yr AEE Rhif 161/2002 (OJ Rhif L38, 13.2.2003, t.16 ac atodiad AEE Rhif 9, 13.2.2003, t.13).

(5) OJ Rhif L80, 23.3.2002, t.42.

(6) OJ Rhif L86, 3.4.2002, t.5, fel y'i mabwysiadwyd drwy Benderfyniad Cyd-bwyllgor yr AEE Rhif 161/2002.

(7) OJ Rhif L155, 14.6.2002, t.63, fel y'i mabwysiadwyd drwy Benderfyniad Cyd-bwyllgor yr AEE Rhif 161/2002.

(8) OJ Rhif L203, 12.8.2003, t.1.

(9) OJ Rhif L326, 13.12.2003, t.12.

(10) OJ Rhif L42, 13.2.2004, t.3

(11) OJ Rhif L74, 12.3.2004, t.11.

(12) OJ Rhif L106, 15.4.2004, t. 6.

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

- (b) yn mynd yn groes i Erthygl 2.3, 4.2 neu 4a o Reoliad y Comisiwn; neu
- (c) yn fwriadol yn mynd yn groes i ofynion hysbysiad a roddwyd o dan adran 9(2)(a) o'r Ddeddf fel y'i cymhwysir at ddibenion y Rheoliadau hyn gan reoliad 7(2), neu yn methu â chydymffurfio â hwy.

Gorfodi

4.-(1) Yn ddarostyngedig i baragraff (2), dyletswydd pob awdurdod iechyd porthladd fydd gweithredu a gorfodi'r Rheoliadau hyn o fewn ei ardal.

(2) Mewn perthynas ag unrhyw le sydd heb ei leoli yn rhanbarth awdurdod iechyd porthladd, caiff y Rheoliadau hyn eu gweithredu a'u gorfodi gan yr awdurdod bwyd sy'n gweithredu dros yr ardal lle mae'r lle hwnnw.

Addasu adran 29 o Ddeddf Diogelwch Bwyd 1990 (caffael samplau) a dadansoddi'r samplau

5.-(1) Wrth ei chymhwyso i samplu unrhyw fwyd a bennir yn adrannau 1 i 6 o Atodiad I i Reoliad y Comisiwn, addasir adran 29 o'r Ddeddf i'w gwneud yn ofynnol i weithredu'r pŵer i gymryd samplau o dan is-adran (b) a (d) o'r adran honno yn unol â'r dulliau samplu a ddisgrifir neu y cyfeirir atynt-

- (a) (yn ddarostyngedig i'r gofyniad a bennir yng nghlofn 3 o adran 1 o Atodiad I i Reoliad y Comisiwn(1)), yn yr Atodiad i Gyfarwyddeb y Comisiwn 2002/63/EC sy'n gosod dulliau samplu'r Gymuned ar gyfer rheoli'n swyddogol weddillion plaleiddiaid mewn cynhyrchion sy'n dod o blanhigion ac anifeiliaid ac arnynt, ac yn diddymu Cyfarwyddeb 79/700/EC(2), pan fo'r bwyd dan sylw yn dilyn disgrifiad a bennir yn adran 1 o Atodiad I i Reoliad y Comisiwn, y mae'r Gyfarwyddeb honno yn gymwys i'w samplu, yn unol ag Erthygl 1.3 o'r Rheoliad hwnnw;
- (b) yn Atodiad I i Gyfarwyddeb 98/53/EC, pan fo'r bwyd dan sylw yn dilyn disgrifiad a bennir yn adran 2 o Atodiad I i Reoliad y Comisiwn, y mae'r Gyfarwyddeb honno yn gymwys i'w samplu, yn unol ag Erthygl 1.3 o'r Rheoliad hwnnw;
- (c) yn Atodiad I i Gyfarwyddeb 2001/22/EC, pan fo'r bwyd dan sylw yn dilyn disgrifiad a bennir yn adran 3 neu 4 o Atodiad I i Reoliad y Comisiwn, y mae'r Gyfarwyddeb honno yn

- (b) he or she contravenes Article 2.3, 4.2 or 4a of the Commission Regulation; or
- (c) he or she knowingly contravenes or fails to comply with the requirements of a notice given under section 9(2)(a) of the Act as applied for the purposes of these Regulations by regulation 7(2).

Enforcement

4.-(1) Subject to paragraph (2), it is the duty of each port health authority to execute and enforce these Regulations within its district.

(2) In relation to any place which is not situated in the district of a port health authority, these Regulations are to be executed and enforced by the food authority for the area in which that place is situated.

Modification of section 29 of the Food Safety Act 1990 (procurement of samples) and analysis of samples

5.-(1) In its application to the taking of a sample of any food specified in sections 1 to 6 of Annex I to the Commission Regulation, section 29 of the Act is modified so as to require the power to take samples under subsection (b) and (d) of that section to be exercised in accordance with the methods of taking samples described or referred to -

- (a) (subject to the requirement specified in column 3 of section 1 of Annex I to the Commission Regulation(1)), 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(2), 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;
- (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;
- (c) 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

(1) Y gofyniad yw mai 10 yw isafswm nifer yr unedau y mae eu hangen ar gyfer sampl labordy mewn amgylchiadau o'r fath.

(2) OJ Rhif L187, 16.7.2002, t.30.

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

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

gymwys i'w samplu, yn unol ag Erthygl 1.3 o'r Rheoliad hwnnw;

- (ch) yn Atodiad I i Gyfarwyddeb 2002/26/EC, pan fo'r bwyd dan sylw yn dilyn disgrifiad a bennir yn adran 2 o Atodiad I i Reoliad y Comisiwn, y mae'r Gyfarwyddeb honno yn gymwys i'w samplu, yn unol ag Erthygl 1.3 o'r Rheoliad hwnnw;
- (d) yn Atodiad I i Gyfarwyddeb 2002/69/EC, pan fo'r bwyd dan sylw yn dilyn disgrifiad a bennir yn adran 5 o Atodiad I i Reoliad y Comisiwn, y mae'r Gyfarwyddeb honno yn gymwys i'w samplu, yn unol ag Erthygl 1.3 o'r Rheoliad hwnnw;
- (dd) yn Atodiad I i Gyfarwyddeb 2003/78/EC, pan fo'r bwyd dan sylw yn dilyn disgrifiad a bennir yn adran 2 o Atodiad I i Reoliad y Comisiwn, y mae'r Gyfarwyddeb honno yn gymwys i'w samplu, yn unol ag Erthygl 1.3 o'r Rheoliad hwnnw; ac
- (e) yn Atodiad I i Gyfarwyddeb 2004/16/EC, pan fo'r bwyd dan sylw yn dilyn disgrifiad a bennir yn adran 6 o Atodiad I i Reoliad y Comisiwn, y mae'r Gyfarwyddeb honno yn gymwys i'w samplu, yn unol ag Erthygl 1.3 o'r Rheoliad hwnnw.

(2) Pan fo swyddog awdurdodedig, yn unol ag adran 29(b) neu (d) o'r Ddeddf fel y'i haddaswyd gan baragraff (1), wedi cymryd sampl o fwyd sy'n dilyn y disgrifiad y cyfeirir ato yn is-baragraff (b) o'r paragraff hwnnw, a'i fod yn cyflwyno'r sampl i gael ei dadansoddi yn unol ag adran 30(1)(a) o'r Ddeddf, rhaid i'r person sy'n dadansoddi'r sampl sicrhau-

- (a) y caiff y sampl ei pharatoi yn unol â-
 - (i) paragraffau 1.1, 2 a 3 o Atodiad II i Gyfarwyddeb 98/53/EC, a
 - (ii) yn achos cnau cyfan, yn unol â pharagraff 1.2 o'r Atodiad hwnnw;
- (b) bod unrhyw ddadansoddiad o'r sampl yn cael ei wneud yn unol â dulliau dadansoddi sydd-
 - (i) yn cydymffurfio â pharagraffau 1 a 2 o'r Atodiad i Gyfarwyddeb 85/591/EEC i'r graddau y mae hynny'n ymarferol, a
 - (ii) yn bodloni'r meini prawf a bennir ym mharagraff 4.3 o Atodiad II i Gyfarwyddeb 98/53/EC fel y'i darllenir ar y cyd â nodiadau'r paragraff hwnnw;
- (c) bod unrhyw ddadansoddiad o'r sampl yn cael ei wneud gan labordy sy'n cydymffurfio â Chyfarwyddeb 93/99/EEC; ac
- (ch) bod yr adroddiad o ganlyniadau dadansoddi'r sampl honno-
 - (i) yn defnyddio'r diffiniadau a geir ym mharagraff 4.1 o Atodiad II i Gyfarwyddeb 98/53/EC, a

Directive applies pursuant to Article 1.3 of that Regulation;

- (d) 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;
- (e) 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;
- (f) 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; and
- (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.

(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 he or she 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 -
 - (i) so far as practicable comply with paragraphs 1 and 2 of the Annex to Directive 85/591/EEC, and
 - (ii) 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 complies with Directive 93/99/EEC; 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 98/53/EC, and

(ii) yn unol â pharagraff 4.4 o'r Atodiad hwnnw.

(3) Pan fo swyddog awdurdodedig, yn unol ag adran 29(b) neu (d) o'r Ddeddf fel y'i haddaswyd gan baragraff (1), wedi cymryd sampl o fwyd sy'n dilyn y disgrifiad y cyfeirir ato yn is-baragraff (c) o'r paragraff hwnnw, a'i fod yn cyflwyno'r sampl i gael ei dadansoddi yn unol ag adran 30(1)(a) o'r Ddeddf, rhaid i'r person sy'n dadansoddi'r sampl sicrhau-

- (a) y caiff y sampl ei pharatoi yn unol â pharagraffau 1 a 2 o Atodiad II i Gyfarwyddeb 2001/22/EC ac, yn achos paragraff 2, fel y'i darllenir ar y cyd â'r nodyn i'r paragraff hwnnw;
- (b) bod unrhyw ddadansoddiad o'r sampl yn cael ei wneud yn unol â dulliau dadansoddi sydd-
 - (i) i'r graddau y mae'n ymarferol, yn cydymffurfio â pharagraffau 1 a 2 o'r Atodiad i Gyfarwyddeb 85/591/EEC,
 - (ii) yn achos dadansoddi ar gyfer plwm (ac eithrio mewn gwin), mercwri neu gadmiwm, yn bodloni'r meini prawf a bennir ym mharagraff 3.3.1 o Atodiad II i Gyfarwyddeb 2001/22/EC,
 - (iii) yn achos dadansoddi ar gyfer plwm mewn gwin, yn cydymffurfio ag ail is-baragraff paragraff 3.2 o'r Atodiad hwnnw, a
 - (iv) yn achos dadansoddi ar gyfer 3-MCPS, yn bodloni'r meini prawf a bennir ym mharagraff 3.3.2 o'r Atodiad hwnnw fel y'u darllenir ar y cyd â'r nodyn i'r paragraff hwnnw;
- (c) bod unrhyw ddadansoddiad o'r sampl yn cael ei wneud gan labordy sy'n cydymffurfio â Chyfarwyddeb 93/99/EEC;
- (ch) bod unrhyw ddadansoddiad o'r sampl yn cael ei wneud mewn ffordd sy'n cydymffurfio ag is-baragraff cyntaf ac ail is-baragraff paragraff 3.4 o Atodiad II i Gyfarwyddeb 2001/22/EC ac, yn achos yr ail is-baragraff, fel y'i darllenir ar y cyd â'r nodyn i'r is-baragraff hwnnw; a
- (d) bod yr adroddiad o ganlyniadau dadansoddi'r sampl honno-
 - (i) yn defnyddio'r diffiniadau a geir ym mharagraff 3.1 o Atodiad II i Gyfarwyddeb 2001/22/EC, fel y'i darllenir ar y cyd â'r nodyn i'r paragraff hwnnw, a
 - (ii) yn unol â thrydydd is-baragraff paragraff 3.4 a pharagraff 3.6 o'r Atodiad hwnnw.

(4) Pan fo swyddog awdurdodedig, yn unol ag adran 29(b) neu (d) o'r Ddeddf fel y'i haddaswyd gan baragraff (1), wedi cymryd sampl o fwyd sy'n dilyn y disgrifiad y cyfeirir ato yn is-baragraff (ch) o'r paragraff hwnnw, a'i fod yn cyflwyno'r sampl i gael ei

(ii) is in accordance with paragraph 4.4 of that Annex.

(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 (c) of that paragraph, and he or she 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) so far as practicable comply with paragraphs 1 and 2 of the Annex to Directive 85/591/EEC,
 - (ii) in the case of analysis for lead (other than in wine), mercury or cadmium, meet the criteria specified in paragraph 3.3.1 of Annex II to Directive 2001/22/EC,
 - (iii) in the case of analysis for lead in wine, comply with the second sub-paragraph of paragraph 3.2 of that Annex, and
 - (iv) in the case of analysis for 3-MCPD, meet the criteria specified in paragraph 3.3.2 of that Annex as read with the note to that paragraph;
- (c) any analysis of the sample is carried out by a laboratory which complies with Directive 93/99/EEC;
- (d) any analysis of the sample is carried out in such a way as to comply with the first and second sub-paragraphs of paragraph 3.4 of Annex II to Directive 2001/22/EC as read in the case of the second 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 third sub-paragraph of paragraph 3.4 and with paragraph 3.6 of that Annex.

(4) 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 (d) of that paragraph, and he or she has submitted that sample to be analysed pursuant to

dadansoddi yn unol ag adran 30(1)(a) o'r Ddeddf, rhaid i'r person sy'n dadansoddi'r sampl sicrhau-

- (a) y caiff y sampl ei pharatoi yn unol â pharagraffau 1 i 3 o Atodiad II i Gyfarwyddeb 2002/26/EC;
- (b) bod unrhyw ddadansoddiad o'r sampl yn cael ei wneud yn unol â dulliau dadansoddi-
 - (i) sydd yn cydymffurfio â pharagraffau 1 a 2 o'r Atodiad i Gyfarwyddeb y Cyngor 85/591/EEC, a
 - (ii) sydd yn bodloni'r meini prawf a bennir ym mharagraff 4.3 o Atodiad II i Gyfarwyddeb 2002/26/EC fel y'i darllenir ynghyd â'r nodiadau i'r paragraff hwnnw;
- (c) bod unrhyw ddadansoddiad o'r sampl yn cael ei wneud gan labordy sy'n cydymffurfio â Chyfarwyddeb 93/99/EEC; ac
- (ch) bod yr adroddiad o ganlyniadau dadansoddi'r sampl honno-
 - (i) yn defnyddio'r diffiniadau a geir ym mharagraff 4.1 o Atodiad II o Gyfarwyddeb 2002/26/EC, a
 - (ii) yn cydymffurfio â pharagraff 4.4 o'r Atodiad hwnnw.

(5) Pan fo swyddog awdurdodedig, yn unol ag adran 29(b) neu (d) o'r Ddeddf fel y'i haddaswyd gan baragraff (1), wedi cymryd sampl o fwyd sy'n dilyn y disgrifiad y cyfeirir ato yn is-baragraff (d) o'r paragraff hwnnw, a'i fod yn cyflwyno'r sampl i gael ei dadansoddi yn unol ag adran 30(1)(a) o'r Ddeddf, rhaid i'r person sy'n dadansoddi'r sampl sicrhau-

- (a) y caiff y sampl ei pharatoi yn unol â pharagraff 3 o Atodiad II i Gyfarwyddeb 2002/69/EC, fel y'i darllenir ar y cyd â pharagraffau 1 a 2 o'r Atodiad hwnnw;
- (b) bod unrhyw ddadansoddiad o'r sampl yn cael ei wneud -
 - (i) yn unol â dulliau dadansoddi sydd yn bodloni'r meini prawf a geir ym mharagraffau 5, 6 a 7 o Atodiad II i Gyfarwyddeb 2002/69/EC, fel y'u darllenir ar y cyd â pharagraffau 1 a 2 o'r Atodiad hwnnw, a
 - (ii) gan labordy sy'n cydymffurfio â gofynion paragraff 4 o Atodiad II i Gyfarwyddeb 2002/69/EC; ac
- (c) bod yr adroddiad o ganlyniadau dadansoddi'r sampl yn unol â pharagraff 8 o Atodiad II i Gyfarwyddeb 2002/69/EC.

(6) Pan fo swyddog awdurdodedig, yn unol ag adran 29(b) neu (d) o'r Ddeddf fel y'i haddaswyd gan baragraff (1), wedi cymryd sampl o fwyd sy'n dilyn y disgrifiad y cyfeirir ato yn is-baragraff (dd) o'r paragraff hwnnw, a'i fod yn cyflwyno'r sampl i gael ei dadansoddi yn unol ag adran 30(1)(a) o'r Ddeddf, rhaid i'r person sy'n dadansoddi'r sampl sicrhau-

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 2002/26/EC;
- (b) any analysis of the sample is carried out in accordance with methods of analysis which -
 - (i) comply with paragraphs 1 and 2 of the Annex to Council Directive 85/591/EEC, and
 - (ii) meet the criteria specified in paragraph 4.3 of Annex II to Directive 2002/26/EC as read with the notes to that paragraph;
- (c) any analysis of the sample is carried out by a laboratory which complies with Directive 93/99/EEC; 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.

(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 (e) of that paragraph, and he or she 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 -
 - (i) in accordance with methods of analysis which meet the 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, and
 - (ii) by a laboratory which complies with the requirements of paragraph 4 of Annex II to Directive 2002/69/EC; and
- (c) 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.

(6) 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 he or she 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) y caiff y sampl ei pharatoi yn unol â pharagraffau 1 i 3 o Atodiad II i Gyfarwyddeb 2003/78/EC;
- (b) bod unrhyw ddadansoddiad o'r sampl yn cael ei wneud yn unol â dulliau dadansoddi sydd-
 - (i) yn cydymffurfio â pharagraffau 1 a 2 o'r Atodiad i Gyfarwyddeb y Cyngor 85/591/EEC, a
 - (ii) yn bodloni'r meini prawf a bennir ym mharagraff 4.3 o Atodiad II i Gyfarwyddeb 2003/78/EC fel y'i darllenir ynghyd â'r nodiadau i'r paragraff hwnnw;
- (c) bod unrhyw ddadansoddiad o'r sampl yn cael ei wneud gan labordy sy'n cydymffurfio â Chyfarwyddeb 93/99/EEC; ac
- (ch) bod yr adroddiad o ganlyniadau'r dadansoddiad o'r sampl honno-
 - (i) yn defnyddio'r diffiniadau a geir ym mharagraff 4.1 o Atodiad II i Gyfarwyddeb 2003/78/EC, a
 - (ii) yn cydymffurfio â pharagraff 4.4 o'r Atodiad hwnnw.

(7) Pan fo swyddog awdurdodedig, yn unol ag adran 29(b) neu (d) o'r Ddeddf fel y'i haddaswyd gan baragraff (1), wedi cymryd sampl o fwyd sy'n dilyn y disgrifiad y cyfeirir ato yn is-baragraff (e) o'r paragraff hwnnw, a'i fod wedi cyflwyno'r sampl i gael ei dadansoddi yn unol ag adran 30(1)(a) o'r Ddeddf, rhaid i'r person sy'n dadansoddi'r sampl sicrhau-

- (a) y caiff y sampl ei pharatoi yn unol â pharagraffau 1, 2 a 3, a'r adran honno o baragraff 4.6 sy'n dwyn y pennawd "Sample Preparation", o Atodiad II i Gyfarwyddeb 2004/16/EC;
- (b) bod unrhyw ddadansoddiad o'r sampl yn cael ei wneud yn unol â dulliau dadansoddi sydd-
 - (i) yn cydymffurfio â pharagraffau 1 a 2 o'r Atodiad i Gyfarwyddeb y Cyngor 85/891/EC, a
 - (ii) yn bodloni'r meini prawf a bennir ym mharagraffau 4.3 a 4.3.1 o Atodiad II i Gyfarwyddeb 2004/16/EC;
- (c) bod unrhyw ddadansoddiad o'r sampl yn cael ei wneud gan labordy sy'n cydymffurfio â Chyfarwyddeb 93/99/EEC a'r adran honno o baragraff 4.6 o Atodiad II i Gyfarwyddeb 2004/16/EC sy'n dwyn y pennawd "Internal Quality Control"; ac
- (ch) bod yr adroddiad o ganlyniadau dadansoddi'r sampl honno-
 - (i) yn defnyddio'r diffiniadau a geir ym mharagraff 4.1 o Atodiad II i Gyfarwyddeb 2004/16/EC, a
 - (ii) yn cydymffurfio â pharagraff 4.4 o'r Atodiad hwnnw.

- (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 -
 - (i) comply with paragraphs 1 and 2 of the Annex to Council Directive 85/591/EEC, and
 - (ii) 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 complies with Directive 93/99/EEC; 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.

(7) 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 (g) of that paragraph, and he or she 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 -
 - (i) comply with paragraphs 1 and 2 of the Annex to Council Directive 85/891/EC, and
 - (ii) 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 complies with Directive 93/99/EEC and 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.

Amddiffyniad o ran allforion

6. Mewn unrhyw achos am dramgwydd o fynd yn groes i reoliad 3, bydd yn amddiffyniad i'r sawl a gyhuddir i brofi bod y bwyd yr honnir y cyflawnwyd y tramgwydd mewn perthynas ag ef wedi ei fwriadu i gael ei allforio i wlad (heblaw am Aelod-wladwriaeth) sydd â deddfwriaeth sy'n cyfateb i'r Rheoliadau hyn, a bod y bwyd yn cydymffurfio â'r ddeddfwriaeth honno.

Cymhwyso gwahanol adrannau o Ddeddf Diogelwch Bwyd 1990

7.-(1) Bydd darpariaethau canlynol y Ddeddf yn gymwys at ddibenion y Rheoliadau hyn, gyda'r addasiad y dylid dehongli unrhyw gyfeiriad yn y darpariaethau hynny at Ddeddf neu at Ran ohoni fel cyfeiriad at y Rheoliadau hyn-

- (a) adran 3 (rhagdybiaeth fod bwyd wedi'i fwriadu i'w fwyta gan bobl);
- (b) adran 20 (tramgwyddau o ganlyniad i fai person arall);
- (c) adran 21 (amddiffyniad o ddiwydrwydd dyladwy), fel y mae'n gymwys at ddibenion adran 8, 14 neu 15;
- (ch) adran 30(8) (sy'n ymwneud â thystiolaeth ddogfennol);
- (d) adran 33(1) (rhwystro etc. swyddogion);
- (dd) adran 33(2), gyda'r addasiad bod y cyfeiriad at "any such requirement as is mentioned in subsection (1)(b) above" yn cael ei ddehongli fel cyfeiriad at unrhyw ofyniad o'r fath a grybwyllir yn adran 33(1)(b) fel y caiff ei chymhwyso gan is-baragraff (d);
- (e) adran 35(1) (cosbi tramgwyddau) i'r graddau y mae'n ymwneud â thramgwyddau o dan adran 33(1) fel y caiff ei chymhwyso gan is-baragraff (d);
- (f) adran 35(2) a (3), i'r graddau y mae'n ymwneud â thramgwyddau o dan adran 33(2) fel y caiff ei chymhwyso gan is-baragraff (dd);
- (ff) adran 36 (tramgwyddau gan gyrff corfforaethol); ac
- (g) adran 44 (amddiffyn swyddogion sy'n ymddwyn yn ddidwyll).

(2) Yn ddarostyngedig i baragraff (3), mae adran 9 o'r Ddeddf (archwilio ac atafaelu bwyd amheus) yn gymwys at ddibenion y Rheoliadau hyn fel pe bai'n darllen fel a ganlyn-

"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 -

- (a) has been placed on the market; or
- (b) is in the possession of, or has been deposited with or consigned to, any

Defence in relation to exports

6. In any proceedings for an offence consisting of a contravention of regulation 3 it is a defence for the accused to prove that the food in respect of which the offence is alleged to have been committed was intended for export to a country (other than a Member State) which has legislation analogous to these Regulations, and that the food complies with that legislation.

Application of various sections of the Food Safety Act 1990

7.-(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 purposes of section 8, 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 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 -

- (a) has been placed on the market; or
- (b) is in the possession of, or has been deposited with or consigned to, any

person for the purpose of placing it 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(a) of the Contaminants in Food (Wales) Regulations 2005.

(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 and Directive 2004/16/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, he or she, as soon as is reasonably practicable and in any event within 21 days, is to determine whether or not he or she is satisfied that the food complies with the requirements of regulation 3(a) of the above Regulations, as appropriate and -

(a) if he or she is so satisfied, forthwith withdraw the notice;

(b) if he or she is not so satisfied, 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, he or she is to inform the person in charge of the food of his or her intention to have it dealt with by a justice of the peace and -

(a) any person who under regulation 3(a) of the above Regulations might be liable to a prosecution in respect of the food is, if he or she 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(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

person for the purpose of placing it 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(a) of the Contaminants in Food (Wales) Regulations 2005.

(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 and Directive 2004/16/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, he or she, as soon as is reasonably practicable and in any event within 21 days, is to determine whether or not he or she is satisfied that the food complies with the requirements of regulation 3(a) of the above Regulations, as appropriate and -

(a) if he or she is so satisfied, forthwith withdraw the notice;

(b) if he or she is not so satisfied, 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, he or she is to inform the person in charge of the food of his or her intention to have it dealt with by a justice of the peace and -

(a) any person who under regulation 3(a) of the above Regulations might be liable to a prosecution in respect of the food is, if he or she 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(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(a) of the above Regulations he or she is to 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 is to 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) "Bydd yr ymadroddion "authorised officer", "food authority", "port health 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", a "Directive 2004/16/EC" a ddefnyddir yn adran 9 o'r Ddeddf, i'r graddau y mae'n gymwys at ddibenion y Rheoliadau hyn yn rhinwedd paragraff (2), at y dibenion hynny, yn dwyn yr un ystyr ag sydd i'r ymadroddion Saesneg hynny a'r ymadroddion Cymraeg cyfatebol yn y Rheoliadau hyn."

Ailallforio neu ddinistrio bwyd a fewnforiwyd i Gymru nad yw'n cydymffurfio â'r Rheoliadau hyn

8.-(1) Os yw'n ymddangos i swyddog awdurdodedig o awdurdod ieched porthladd neu, yn ôl y digwydd, awdurdod bwyd, fod unrhyw fwyd yn mynd yn groes i reoliad 3(a) a'i fod wedi'i fewnforio i Gymru, ar ôl ymgynghori yn briodol â'r person y mae'n ymddangos iddo ei fod yn mewnforio'r bwyd, caiff gyflwyno hysbysiad ar y person hwnnw yn ei gwneud yn ofynnol-

- (a) (pan fodlonwyd gofynion Erthygl 12 o Reoliad 178/2002) i ailallforio'r bwyd i wlad heblaw am Aelod-wladwriaeth o fewn y cyfnod rhesymol hwnnw a bennir yn yr hysbysiad, neu

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(a) of the above Regulations he or she is to 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 is to 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", "port health 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" and "Directive 2004/16/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 English expressions and their corresponding Welsh expressions respectively bear in these Regulations.

Re-export or destruction of food imported into Wales that does not comply with these Regulations

8.-(1) If it appears to an authorised officer of a port health authority or as the case may be food authority that any food contravenes regulation 3(a) and has been imported into Wales he or she may after appropriate consultation with a person appearing to him or her to be the importer of the food serve on that person a notice requiring -

- (a) (where the requirements of Article 12 of Regulation 178/2002 are satisfied) the re-export of the food to a country other than a Member State within such reasonable period as specified in the notice, or

(b) (pan na fodlonwyd gofynion Erthygl 12 o Reoliad 178/2002) i ddinistrio'r bwyd o fewn y cyfnod rhesymol hwnnw a bennir.

(2) Rhaid i'r hysbysiad a gyflwynir o dan baragraff (1) ddatgan-

- (a) bod hawl apelio i lys ynadon; a
- (b) y cyfnod erbyn pryd y caniateir dwyn yr apêl.

(3) Caiff unrhyw berson a dramgwyddir gan benderfyniad swyddog awdurdodedig i gyflwyno hysbysiad o dan baragraff (1) apelio at lys ynadon, a fydd yn penderfynu pa un a ddylai'r hysbysiad sefyll neu a ddylid ei ddileu.

(4) Chwe diwrnod o'r dyddiad y cyflwynwyd yr hysbysiad ac eithrio dyddiau Sadwrn, dyddiau Sul a gwyliau cyhoeddus yw'r cyfnod erbyn pryd y caniateir dwyn yr apêl a grybwyllwyd ym mharagraff (3) ac, at ddibenion y paragraff hwn, bernir bod gwneud yr achwyniad yn gyfystyr â dwyn yr apêl.

(5) Pan wneir apêl i lys ynadon o dan baragraff (3), bydd y weithdrefn ar ffurf achwyniad er mwyn cael gorchymyn, a bydd Deddf Llysoedd Ynadon 1980(1) yn gymwys i'r achos.

(6) Os bydd y llys yn caniatáu apêl a ddygir o dan baragraff (3), rhaid i'r awdurdod o dan sylw dalu iawndal i berchennog y bwyd o dan sylw am unrhyw ddibrisiant yn ei werth sy'n deillio o'r camau a gymerir gan y swyddog awdurdodedig.

(7) Penderfynir unrhyw gwestiwn y mae dadl yn ei gylch o dan baragraff (6), o ran yr hawl i gael iawndal neu swm unrhyw iawndal sy'n daladwy, drwy gymrodeddu.

(8) Bydd unrhyw berson sy'n torri amodau hysbysiad a gyflwynir o dan baragraff (1) yn euog o dramgwydd ac yn agored, o'i gollfarnu'n ddiannod, i ddirwy heb fod yn fwy na lefel 5 ar y raddfa safonol neu i garchar am gyfnod heb fod yn fwy na thri mis neu'r ddau.

(9) Mae'r rheoliad hwn yn ddarostyngedig i reoliad 9.

Triniaeth eilaidd bwyd a fewnforiwyd i Gymru nad yw'n cydymffurfio â'r Rheoliadau hyn

9.-(1) Mewn perthynas ag unrhyw fwyd-

- (a) sydd o'r math y cyfeirir ato yn erthygl 4.3a, b a d o Reoliad y Comisiwn; a
- (b) y caiff swyddog awdurdodedig gyflwyno hysbysiad yn unol â rheoliad 8(1) mewn perthynas ag ef,

(b) (where the requirements of Article 12 of Regulation 178/2002 are not satisfied) the destruction of the food within such reasonable period as so specified.

(2) The notice served under paragraph (1) is to state -

- (a) the right of appeal to a magistrates' court; and
- (b) the period within which such an appeal may be brought.

(3) Any person who is aggrieved by the decision of an authorised officer to serve a notice under paragraph (1) may appeal to a magistrates' court, which determines whether or not the notice should be upheld or set aside.

(4) The period within which such an appeal as is mentioned in paragraph (3) may be brought is 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and Public Holidays and the making of the complaint is deemed for the purpose of this paragraph to be the bringing of the appeal.

(5) The procedure on an appeal to a magistrates' court under paragraph (3) is to be by way of complaint for an order, and the Magistrates' Courts Act 1980(1) applies to the proceedings.

(6) If the court allows an appeal brought under paragraph (3) the authority concerned is to compensate the owner of the food concerned 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 paragraph (6) is to be determined by arbitration.

(8) Any person who breaches the terms of a notice served under paragraph (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

(9) This Regulation is subject to regulation 9.

Secondary treatment of food imported into Wales that does not comply with these Regulations

9.-(1) In relation to any food which -

- (a) is of the type referred to in Article 4.3 a, b and d of the Commission Regulation; and
- (b) in respect of which an authorised officer may serve a notice in accordance with regulation 8(1),

(a) 1980 p. 43.

(a) 1980 c. 43.

caiff y swyddog awdurdodedig, ar ôl ymgynghori'n briodol gyda pherson y mae'n ymddangos iddo ei fod yn mewnfario bwyd, gyflwyno hysbysiad i'r person hwnnw yn ei gwneud yn ofynnol iddo-

(aa) trin y bwyd dim ond yn unol ag Erthygl 4.3 o Reoliad y Comisiwn; ac

(bb) rhoi'r bwyd ar y farchnad cyn gynted ag y bo'n rhesymol ymarferol.

(2) Rhaid i'r hysbysiad a gyflwynir o dan baragraff (1) ddatgan-

(a) bod hawl apelio i lys ynadon; a

(b) y cyfnod erbyn pryd y caniateir dwyn yr apêl honno.

(3) Caiff unrhyw berson a dramgwyddir gan benderfyniad swyddog awdurdodedig i gyflwyno hysbysiad o dan baragraff (1) apelio at lys ynadon, a fydd yn penderfynu pa un a ddylai'r hysbysiad sefyll neu a ddylid ei ddileu.

(4) Chwe diwrnod o'r dyddiad pan gyflwynwyd yr hysbysiad ac eithrio dyddiau Sadwrn, dyddiau Sul a Gwyliau Cyhoeddus yw'r cyfnod erbyn pryd y caniateir dwyn yr apêl a grybwyllwyd ym mharagraff (3) ac, at ddibenion y paragraff hwn, bernir bod gwneud yr achwyniad yn gyfystyr â dwyn yr apêl.

(5) Pan wneir apêl i lys ynadon o dan baragraff (3), bydd y weithdrefn ar ffurf achwyniad er mwyn cael gorchymyn, a bydd Deddf Llysoedd Ynadon 1980 yn gymwys i'r achos.

(6) Os bydd y llys yn caniatáu dwyn apêl o dan baragraff (3), rhaid i'r awdurdod o dan sylw dalu iawndal i berchennog y bwyd o dan sylw am unrhyw ddibrisiant yn ei werth sy'n deillio o'r camau a gymerwyd gan y swyddog awdurdodedig.

(7) Penderfynir unrhyw gwestiwn y mae dadl yn ei gylch o dan baragraff (6), o ran yr hawl i gael iawndal, neu swm unrhyw iawndal sy'n daladwy, drwy gymrodeddu.

(8) Bydd unrhyw berson sy'n methu â chydymffurfio ag unrhyw un o'r gofynion a bennir mewn hysbysiad o dan baragraff (1) yn euog o dramgwydd ac yn agored, o'i gollfarnu'n ddiannod, i ddirwy heb fod yn fwy na lefel 5 ar y raddfa safonol neu i garchar am gyfnod heb fod yn fwy na thri mis neu'r ddau.

Darpariaethau trosiannol

10. Ni fydd rheoliad 3(a) yn gymwys mewn perthynas ag unrhyw fwyd-

(a) a roddwyd ar y farchnad yn gyfreithlon mewn gwladwriaeth AEE cyn 5 Ebrill 2002, ac y mae Erthygl 1.1, 2.1 neu 2.2 o Reoliad y Comisiwn, fel y'u darllenir ar y cyd ag Erthygl 1.2 o'r Rheoliad hwnnw, yn berthnasol iddo ond sy'n methu â bodloni eu gofynion, a hynny i'r graddau bod y methiant oherwydd rhoi'r bwyd

the authorised officer may, after appropriate consultation with a person appearing to him or her to be the importer of the food, serve on that person a notice requiring him or her to -

(aa) deal with the food only in compliance with Article 4.3 of the Commission Regulation; and

(bb) place the food on the market as soon as is reasonably practicable.

(2) The notice served under paragraph (1) is to state -

(a) the right of appeal to a magistrates' court; and

(b) the period within which such an appeal may be brought.

(3) Any person who is aggrieved by the decision of an authorised officer to serve a notice under paragraph (1) may appeal to a magistrates' court, which determines whether or not the notice should be upheld or set aside.

(4) The period within which such an appeal as is mentioned in paragraph (3) may be brought is 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and Public Holidays and the making of the complaint is deemed for the purpose of this paragraph to be the bringing of the appeal.

(5) The procedure on an appeal to a magistrates' court under paragraph (3) is by way of complaint for an order, and the Magistrates' Court Act 1980 applies to the proceedings.

(6) If the court allows an appeal brought under paragraph (3) the authority concerned is to compensate the owner of the food concerned 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 paragraph (6) is determined by arbitration.

(8) Any person who fails to comply with any of the requirements specified in a notice served under paragraph (1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months or to both.

Transitional provisions

10. Regulation 3(a) does not apply in relation to any food -

(a) lawfully placed on the market in an EEA State before 5 April 2002 which is covered by, but fails to meet the requirements of, Article 1.1, 2.1 or 2.2 of the Commission Regulation, as read with Article 1.2 of that Regulation, to the extent that the failure consists in the food being placed on the market containing a contaminant

ar y farchnad pan oedd yn cynnwys halogyn a nodir yn adran 3 neu 4 o Atodlen I i'r Rheoliad hwnnw, a bod yr halogyn ar lefel uwch na'r lefel a bennir o ran y bwyd hwnnw yn ail golofn yr adran dan sylw; neu

- (b) a roddwyd ar y farchnad yn gyfreithlon mewn gwladwriaeth AEE cyn 1 Tachwedd 2003, ac y mae Erthygl 1.1, 2.1 neu 2.2 o Reoliad y Comisiwn, fel y'u darllenir ar y cyd ag Erthygl 1.2 o'r Rheoliad hwnnw, yn berthnasol iddo ond sy'n methu â bodloni eu gofynion, a hynny i'r graddau bod y methiant oherwydd rhoi'r bwyd ar y farchnad pan oedd yn cynnwys patwlin ar lefel uwch na'r lefel a bennir o ran y bwyd hwnnw yn ail golofn adran 2.3 o Atodlen I i'r Rheoliad hwnnw.

11. Ni fydd rheoliad 3(b) yn gymwys mewn perthynas ag unrhyw achos o fynd yn groes i Erthygl 2.3 o Reoliad y Comisiwn, a hynny i'r graddau ei fod oherwydd defnyddio'r canlynol fel cynhwysyn bwyd wrth gynhyrchu bwyd cyfansawdd-

- (a) bwyd a roddwyd ar y farchnad yn gyfreithlon mewn gwladwriaeth AEE cyn 5 Ebrill 2002 ac sy'n cynnwys halogyn a bennir yn adran 3 neu 4 o Atodiad I i'r Rheoliad hwnnw, a bod yr halogyn ar lefel uwch na'r lefel a bennir mewn perthynas â'r bwyd hwnnw yn ail golofn yr adran dan sylw; neu
- (b) bwyd a roddwyd ar y farchnad yn gyfreithlon mewn gwladwriaeth AEE cyn 1 Tachwedd 2003 ac sy'n cynnwys patwlin ar lefel uwch na'r lefel a bennir mewn perthynas â'r bwyd hwnnw yn ail golofn adran 2.3 o Atodlen I i'r Rheoliad hwnnw.

Diwygiadau canlyniadol

12. Yn Atodlen 1 i Reoliadau Diogelwch Bwyd (Samplu a Chymwysterau) 1990(1) i'r graddau y maent yn gymwys i Gymru (darpariaethau nad yw'r Rheoliadau hynny yn gymwys iddynt), yn lle'r cofnod sy'n ymwneud â Rheoliadau Halogion mewn Bwyd (Cymru) 2003, rhodder y cofnod a ganlyn-

"The Contaminants in Food (Wales) Regulations 2005 (to the extent that a sample falls to be prepared and analysed in accordance with regulation 5 of those Regulations) S.I. 2005/364 (W.31)".

specified in section 3 or 4 of Annex I to that Regulation at a level higher than that specified in relation to that food in the second column of the section concerned; or

- (b) lawfully placed on the market in an EEA State before 1 November 2003 which is covered by, but fails to meet the requirements of Article 1.1, 2.1 or 2.2 of the Commission Regulation, as read with Article 1.2 of that Regulation, to the extent that the failure consists in the food being placed on the market containing patulin at a level higher than that specified in relation to that food in the second column of section 2.3 of Annex I to that Regulation.

11. Regulation 3(b) is not to apply in relation to any contravention of Article 2.3 of the Commission Regulation, to the extent that the contravention consists in the use as a food ingredient, for the production of a compound foodstuff, of -

- (a) food lawfully placed on the market in an EEA State before 5 April 2002 and containing a contaminant specified in Section 3 or 4 of Annex I to that Regulation at a level higher than that specified in relation to that food in the second column of the section concerned; or
- (b) food lawfully placed on the market in an EEA State before 1 November 2003 and containing patulin at a level higher than that specified in relation to that food in the second column of Section 2.3 of Annex I to that Regulation.

Consequential amendments

12. In Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 1990(1) 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 substitute the following entry -

"The Contaminants in Food (Wales) Regulations 2005 (to the extent that a sample falls to be prepared and analysed in accordance with regulation 5 of those Regulations) S.I. 2005/364 (W.31)".

(1) O.S.1990/2463; yr offerynnau diwygio perthnasol yw O.S. 1999/1603, O.S. 2002/1886 (Cy.195) ac O.S. 2003/1721 (Cy.188).

(1) 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).

Dirymu

13. Dirymir Rheoliadau Tun mewn Bwyd 1992(1), i'r graddau y maent yn gymwys o ran Cymru, a'r Rheoliadau Halogion mewn Bwyd (Cymru) 2003(2).

Llofnodwyd ar ran Cynulliad Cenedlaethol Cymru yn unol ag adran 66(1) o Ddeddf Llywodraeth Cymru 1998(3).

22 Chwefror 2005

Llywydd y Cynulliad Cenedlaethol

Revocations

13. The Tin in Food Regulations 1992(1) insofar as they apply in relation to Wales and the Contaminants in Food (Wales) Regulations 2003(2) are revoked.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(3)

22 February 2005

D. Elis-Thomas

The Presiding Officer of the National Assembly

(1) O.S. 1992/496.

(2) O.S. 2003/1721.

(3) 1998 p.38.

(1) S.I. 1992/496.

(2) S.I. 2003/1721.

(3) 1998 c.38.

OFFERYNNAU STATUDOL

2005 Rhif 364 (Cy.31)

BWYD, CYMRU

Rheoliadau Halogion mewn Bwyd
(Cymru) 2005

STATUTORY INSTRUMENTS

2005 No. 364 (W.31)

FOOD, WALES

The Contaminants in Food (Wales)
Regulations 2005

©© Hawlfraint y Goron 2005

Argraffwyd a chyhoeddwyd yn y Deyrnas Unedig gan The Stationery Office Limited o dan awdurdod ac arolygiaeth Carol Tullo, Rheolwr Gwasg Ei Mawrhydi ac Argraffydd Deddfau Seneddol y Frenhines.

£3.50

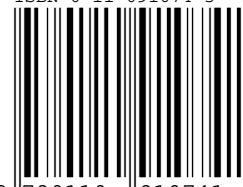
W13/3/05

ON

© Crown copyright 2005

Printed and Published in the UK by the Stationery Office Limited under the authority and superintendence of Carol Tullo, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

ISBN 0-11-091074-5



9 780110 910741