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## EXPLANATORY NOTE

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

1. These Regulations, which apply in relation to Wales, revoke and re-enact with changes the Contaminants in Food (Wales) Regulations 2009 (S.I.2009/1386 (W.142) (as amended)). They make provision for the continuing execution and enforcement of Commission Regulation (EC) No.1881/2006 setting maximum levels for contaminants in foodstuffs (OJ No. L364, 20.12.2006, p.5) (“the Commission Regulation”).

2. The Commission Regulation, which consolidated and made further amendments to the provisions formerly contained in Commission Regulation (EC) No. 466/2001, has recently been amended by Commission Regulation (EU) No. 165/2010, which concerns maximum levels for aflatoxins and the treatment of certain foods found to contain aflatoxins in excess of those levels (OJ No. L50, 27.2.2010, p.8). The Commission Regulation has previously been amended by—

- (a) Commission Regulation (EC) No. 1126/2007 (OJ No. L255, 29.9.2007, p.14), concerning maximum permitted levels for *Fusarium* toxins in maize and maize products;
- (b) Commission Regulation (EC) No. 565/2008 (OJ No. L160, 19.6.2008, p.20), concerning maximum permitted levels for dioxins and PCBs in fish liver;
- (c) Commission Regulation (EC) No. 629/2008 (OJ No. L173, 3.7.2008, p.6), concerning maximum permitted levels for certain heavy metals; and
- (d) Commission Regulation (EU) No. 105/2010 (OJ No. L35, 6.2.2010, p.7), concerning maximum permitted levels for ochratoxin A.

3. These Regulations also provide for the execution and enforcement of Commission Regulation (EC) No. 124/2009 (OJ No. L40, 11.2.2009, p.7) (“Regulation 124/2009”), which concerns maximum permitted levels for certain feed additives that may in specified circumstances occur in food.

4. The Regulations—

- (a) provide that it is an offence, (except in certain cases relating to food placed on the market before a date given in specified EU legislation)—
  - (i) to place on the market certain foods if they contain contaminants of any kind specified in the Commission Regulation or in Regulation 124/2009 at levels exceeding those specified,
  - (ii) to use food containing contaminants at levels in excess of those permitted by the Commission Regulation as ingredients in the production of certain foods,
  - (iii) to mix foods that do not comply with the maximum levels prescribed by the Commission Regulation or Regulation 124/2009 with foods which do comply,
  - (iv) to mix foods to which the Commission Regulation relates and which are intended for direct consumption or as food ingredients with foods to which the Commission Regulation relates and which are intended to be sorted or otherwise treated prior to consumption, or
  - (v) to detoxify by chemical treatment food containing mycotoxins in excess of the limits specified in the Commission Regulation (regulation 3);
- (b) specify the enforcement authorities (regulation 4);

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

- (c) provide for the application of specified provisions of the Food Safety Act 1990 for the purposes of these Regulations (regulation 5);
  - (d) make a consequential amendment to the Food Safety (Sampling and Qualifications) Regulations 1990 in so far as they apply in relation to Wales (regulation 6), the effect being to disapply the sampling and analysis provisions of those Regulations only to the extent that those matters are regulated by the EU instruments mentioned in paragraph 5(a) to (d) below.
- 5.** The Commission Regulation specifies the European Union methods of sampling and analysis that are required to be used for the official control of levels of the substances covered by it. Those methods are set out in—
- (a) Commission Regulation (EC) No. 401/2006 laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs (OJ No. L70, 9.3.2006, p.12), as amended by Commission Regulation (EU) No. 178/2010 (OJ No. L52, 3.3.2010, p.32);
  - (b) Commission Regulation (EC) No. 1882/2006 laying down methods of sampling and analysis for the official control of levels of nitrates in certain foodstuffs (OJ No. L364, 20.12.2006, p.25);
  - (c) Commission Regulation (EC) No. 1883/2006 laying down methods of sampling and analysis for the official control of levels of dioxins and dioxin-like PCBs in certain foodstuffs (OJ No. L364, 20.12.2006, p.32);
  - (d) Commission Regulation (EC) No. 333/2007 laying down the methods of sampling and analysis for the official control of the levels of lead, cadmium, mercury, inorganic tin, 3-MCPD and benzo(a)pyrene in foodstuffs (OJ No. L88, 29.3.2007, p.29).
- 6.** A regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations and is available from the Food Standards Agency, 11th Floor, Southgate House, Wood Street, Cardiff, CF10 1EW.