

**2004 No. 487**

**FOOD**

**The Contaminants in Food Regulations  
(Northern Ireland) 2004**

*Made* - - - - - *25th November 2004*

*Coming into operation* *20th December 2004*

The Department of Health, Social Services and Public Safety<sup>(a)</sup> in exercise of the powers conferred on it by Articles 15(1)(a), (e) and (f), 16(1) and (2), 25(1)(a), (2)(e) and (3), 26(3), 32 and 47(2) of the Food Safety (Northern Ireland) Order 1991<sup>(b)</sup>, and of all other powers enabling it in that behalf, having had regard, in accordance with Article 47(3A) of the said Order, 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<sup>(c)</sup>, and in accordance with Article 47(3) and (3B) of the said Order, hereby makes the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Contaminants in Food Regulations (Northern Ireland) 2004, and shall come into operation on 20th December 2004.

**Interpretation**

2.—(1) In these Regulations –

“authorised lettuce” means lettuce of the kind specified in point 1.3 or in point 1.4 of Section 1 of Annex I to the Commission Regulation, which is grown in the United Kingdom in accordance with the proviso to Article 3.1 of that Regulation and is intended for human consumption there;

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

“the Commission Regulation” means Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs<sup>(d)</sup> as corrected by a corrigendum published on 30th November 2001<sup>(e)</sup>, and as amended by Council Regulation (EC)

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(a) Formerly the Department of Health and Social Services; *see* S.I. 1999/283 (N.I. 1) Article 3(6)  
(b) S.I. 1991/762 (N.I. 7) as amended by S.I.1996/1663 (N.I. 12) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c. 28  
(c) O.J. No. L31, 1.2.2002, p. 1  
(d) O.J. No. L77, 16.3.2001, p. 1, as adopted by EEA Joint Committee Decision No. 81/2002 (O.J. No. L266, 3.10.2002, p. 30 EEA supplement No. 49, 3.10.2002)  
(e) O.J. No. L313, 30.11.2001, p. 60, as adopted by EEA Joint Committee Decision No. 81/2002

No. 2375/2001(a), Commission Regulation (EC) No. 221/2002(b), Commission Regulation (EC) No. 257/2002(c), Commission Regulation (EC) No. 472/2002(d) as corrected by a corrigendum published on 23rd March 2002(e), Commission Regulation (EC) No. 563/2002(f) as corrected by a corrigendum published on 14th June 2002(g), Commission Regulation (EC) No. 1425/2003(h), Commission Regulation (EC) No. 2174/2003(i), Commission Regulation (EC) No. 242/2004(j), Commission Regulation (EC) No. 455/2004(k), and Commission Regulation (EC) No.684/2004(l);

“Directive 85/591/EEC” means Council Directive 85/591/EEC concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption(m);

“Directive 93/99/EEC” means Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs(n)

“Directive 98/53/EC” means Commission Directive 98/53/EC laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs(o) as amended by Commission Directive 2002/27/EC(p) and Commission Directive 2003/121/EC(q) and Commission Directive 2004/43/EC(r);

“Directive 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(s) as corrected by Commission Decision 2001/873/EC(t);

“Directive 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(u) as amended by Commission Directive 2004/43/EC;

“Directive 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(v) as corrected by a corrigendum published on 20th September 2002(w) and as amended by Commission Directive 2004/44/EC(x);

“Directive 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(y);

“Directive 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(z);

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- (a) O.J. No. L321, 6.12.2001, p. 1, as adopted by EEA Joint Committee Decision No. 81/2002
  - (b) O.J. No. L37, 7.2.2002, p. 4, as adopted by EEA Joint Committee Decision No. 139/2002 (O.J. No. L19, 23.1.2003, p.3 and EEA supplement No. 5, 23.1.2003)
  - (c) O.J. No. L41, 13.2.2002, p. 12, as adopted by EEA Joint Committee Decision No. 100/2002 (O.J. No. L298, 31.10.2002, p.13 and EEA supplement No. 54, 31.10.2002, p. 11)
  - (d) O.J. No. L75, 16.3.2002, p. 18, as adopted by EEA Joint Committee Decision No. 161/2002 (O.J. No. L38, 13.2.2003, p. 16 and EEA supplement No. 9, 13.2.2003, p. 13)
  - (e) O.J. No. L80, 23.3.2002, p. 42
  - (f) O.J. No. L86, 3.4.2002, p. 5, as adopted by EEA Joint Committee Decision No. 161/2002
  - (g) O.J. No. L155, 14.6.2002, p. 63, as adopted by EEA Joint Committee Decision No. 161/2002
  - (h) O.J. No. L203, 12.8.2003, p. 1
  - (i) O.J. No. L326, 13.12.2003, p. 12
  - (j) O.J. No. L42, 13.2.2004, p. 3
  - (k) O.J. No. L74, 12.3.2004, p. 11
  - (l) O.J. No. L106, 15.4.2004, p. 6
  - (m) O.J. No. L372, 31.12.1985, p. 50
  - (n) O.J. No. L290, 24.11.1993, p. 14
  - (o) O.J. No. L201, 17.7.1998, p. 93, as adopted by EEA Joint Committee Decision No. 93/1999 (O.J. No. L296, 23.11.2000, p. 58)
  - (p) O.J. No. L75, 16.3.2002, p. 44, as adopted by EEA Joint Committee Decision No. 161/2002
  - (q) O.J. No. L332, 19.12.2003, p. 38
  - (r) O.J. No. L113, 20.4.2004, p. 14
  - (s) O.J. No. L77, 16.3.2001, p. 14
  - (t) O.J. No. L325, 8.12.2001, p. 34
  - (u) O.J. No. L75, 16.3.2002, p. 38
  - (v) O.J. No. L209, 6.8.2002, p. 5
  - (w) O.J. No. L252, 20.9.2002, p. 40
  - (x) O.J. No. L113, 20.4.2004, p. 17
  - (y) O.J. No. L203, 12.8.2003, p. 40
  - (z) O.J. No. L42, 13.2.2004, p. 16

“EEA State” means a member State, Norway, Iceland or Liechtenstein;

“the Order” means the Food Safety (Northern Ireland) Order 1991; and

(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 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale if –

- (a) before 1st January 2005 –
  - (i) he places on the market any food (other than authorised spinach or authorised lettuce) 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
  - (ii) he contravenes Article 2.3, 4.2 or 4a of the Commission Regulation;
- (b) on or after 1st January 2005 –
  - (i) he 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
  - (ii) he contravenes Article 2.3, 4.2 or 4a of the Commission Regulation; or
- (c) he knowingly contravenes or fails to comply with the requirements of a notice given under Article 8(2)(a) of the Order as applied for the purposes of these Regulations by regulation 7(2).

### **Enforcement**

**4.** Each district council shall enforce and execute these Regulations within its district.

### **Modification of Article 29 of the Food Safety (Northern Ireland) Order 1991 (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, Article 29 of the Order shall be modified so as to require the power to take samples under paragraph (b) and (d) of that Article 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 1 to the Commission Regulation<sup>(a)</sup>), 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<sup>(b)</sup>, 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 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;

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<sup>(a)</sup> The requirement is that the minimum number of units required for a laboratory sample in such circumstances is 10

<sup>(b)</sup> O.J. No. L187, 16.7.2002, p. 30

- (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 Article 29(b) or (d) of the Order 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 has submitted that sample to be analysed pursuant to Article 30(1)(a) of the Order the person who analyses the sample shall 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) is in accordance with paragraph 4.4 of that Annex.

(3) Where, pursuant to Article 29(b) or (d) of the Order 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 has submitted that sample to be analysed pursuant to Article 30(1)(a) of the Order the person who analyses the sample shall 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 Article 29(b) or (d) of the Order 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 has submitted that sample to be analysed pursuant to Article 30(1)(a) of the Order the person who analyses the sample shall 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 Article 29(b) or (d) of the Order 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 has submitted that sample to be analysed pursuant to Article 30(1)(a) of the Order the person who analyses the sample shall 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 Article 29(b) or (d) of the Order 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 has submitted that sample to be analysed pursuant to Article 30(1)(a) of the Order the person who analyses the sample shall 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 –
  - (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 Article 29(b) or (d) of the Order 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 has submitted that sample to be analysed pursuant to Article 30(1)(a) of the Order the person who analyses the sample shall ensure that –

- (a) the sample is prepared in accordance with paragraphs 1 to 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 85/591/EEC, 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.

### **Defence in relation to exports**

**6.** In any proceedings for an offence consisting of a contravention of regulation 3 it shall be 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 provisions of the Order**

**7.—(1)** The following provisions of the Order shall apply for the purposes of these Regulations with the modification that any reference in them to the Order or Part thereof shall be construed as a reference to these Regulations –

- (a) Article 4 (presumptions that food intended for human consumption);
- (b) Article 19 (offences due to fault of another person);
- (c) Article 20 (defence of due diligence), as it applies for the purposes of Article 7, 13 or 14;
- (d) Article 30(8) (which relates to documentary evidence);
- (e) Article 34(1) (obstruction etc. of officers);
- (f) Article 34(2), with the modification that the reference to “any such requirement as is mentioned in paragraph (1)(b)” shall be deemed to be a reference to any such requirement as is mentioned in Article 34(1)(b) as applied by sub-paragraph (e);
- (g) Article 36(1) (punishment of offences), in so far as it relates to offences under Article 34(1) as applied by sub-paragraph (e); and
- (h) Article 36(2) and (3), insofar as it relates to offences under Article 34(2) as applied by sub-paragraph (f).

(2) Subject to paragraph (3), Article 8 of the Order (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if it read as follows –

“**8.—(1)** An authorised officer 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 paragraphs (2) to (7) shall 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)(i) or (b)(i) of the Contaminants in Food Regulations (Northern Ireland) 2004.

(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 paragraph (2)(a), he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that the food complies with the requirements of regulation 3(a)(i) or (b)(i) of the aforesaid Regulations, as appropriate and –

- (a) if he is so satisfied, shall forthwith withdraw the notice;
- (b) if he is not so satisfied, shall 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 paragraph (2)(b) or (3)(b), he shall inform the person in charge of the food of his intention to have it dealt with by a justice of the peace and –

- (a) any person who under regulation 3(a)(i) or (b)(i) of the aforesaid Regulations might be liable to a prosecution in respect of the food shall, if he attends before the justice of the peace by whom the food falls to be dealt with, be 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)(i) or (b)(i) of the aforesaid Regulations in relation to that food.

(5) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any food falling to be dealt with by him under this Article fails to comply with the requirements of regulation 3(a)(i) or (b)(i) of the aforesaid Regulations he shall 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 paragraph (2)(a) is withdrawn, or the justice of the peace by whom any food falls to be dealt with under this Article refuses to condemn it, the district council shall 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 paragraph (6) shall be determined by a single arbitrator appointed, failing agreement between the parties, by the Department; and the provisions of the Arbitration Act 1996(a) shall apply accordingly

(8) Any person who knowingly contravenes the requirements of a notice under paragraph 2(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

(3) The expressions “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 Article 8 of the Order so far as it applies for the purposes of these Regulations by virtue of paragraph (2), shall, for those purposes, bear the meanings that those expressions respectively bear in these Regulations.

### **Re-dispatch or destruction of imported food that does not comply with these Regulations**

**8.—**(1) If it appears to an authorised officer that any food contravenes regulation 3(a)(i) or (b)(i) and has been imported into Northern Ireland he may after appropriate consultation with a person appearing to him to be the importer of the food serve on that person a notice requiring –

- (a) the re-dispatch of the food to a country other than a member State within such reasonable period as shall be specified in the notice; or
- (b) (where such re-dispatch would in his opinion involve serious risks to human health) the destruction of the food within such reasonable period as shall be so specified.

(2) The notice served under paragraph (1) shall state –

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(a) 1996 c. 23

- (a) the right of appeal to a court of summary jurisdiction; 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 court of summary jurisdiction, which shall determine 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 shall be 5 days, exclusive of Saturdays, Sundays and Public Holidays, from the date on which notice of the decision was served.

(5) The procedure on an appeal to a court of summary jurisdiction under paragraph (3) shall be by way of notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(a).

(6) If the court allows an appeal brought under paragraph (3) the district council shall 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) shall be determined by a single arbitrator appointed, failing agreement between the parties, by the Department; and the provisions of the Arbitration Act 1996 shall apply accordingly.

(8) Any person who breaches the terms of a notice served under paragraph (1) shall be 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 imported food that does not comply with these Regulations**

**9.—**(1) In relation to any food which is of the type referred to in Article 4.3(a), (b) and (d) of the Commission Regulation and in respect of which an authorised officer may serve a notice in accordance with regulation 8(1), the authorised officer may, after appropriate consultation with a person appearing to him to be the importer of the food, serve on that person a notice requiring him to –

- (a) deal with the food only in compliance with Article 4.3 of the Commission Regulation; and
- (b) place the food on the market as soon as is reasonably practicable.

(2) The notice served under paragraph (1) shall state –

- (a) the right of appeal to a court of summary jurisdiction; 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 court of summary jurisdiction, which shall determine 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 shall be 5 days from the date on which the notice was served exclusive of Saturdays, Sundays and Public Holidays.

(5) The procedure on an appeal to a court of summary jurisdiction under paragraph (3) shall be by way of notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981.

(6) If the court allows an appeal brought under paragraph (3) the district council shall 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) shall be determined by a single arbitrator appointed, failing agreement between the parties, by the Department; and the provisions of the Arbitration Act 1996 shall apply accordingly.

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(a) S.I. 1981/1675 (N.I. 26)



(8) Any person who fails to comply with any of the requirements specified in a notice served under paragraph (1) shall be 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)(i) and (b)(i) shall not apply in relation to any food –

- (a) lawfully placed on the market in an EEA State before 5th 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 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 1st 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(a)(ii) and (b)(ii) shall not 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 5th 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 1st 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.

### **Revocations**

**12.** The Tin in Food Regulations (Northern Ireland) 1992(a) and the Contaminants in Food Regulations (Northern Ireland) 2003(b) are hereby revoked.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 25th November 2004.

(L.S.)

*Jim F. Livingstone*

A senior officer of the Department of Health, Social Services and Public Safety

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(a) S.R. 1992 No. 166  
(b) S.R. 2003 No. 299

## EXPLANATORY NOTE

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

1. These Regulations, which revoke and re-enact with changes the Contaminants in Food Regulations (Northern Ireland) 2003 (S.R. 2003 No. 299) –

- (a) make provision for the execution and enforcement of Commission Regulation (EC) No. 466/2001 setting maximum levels for contaminants in foodstuffs (O.J. 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 contaminants in foodstuffs (O.J. 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 (O.J. 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 (O.J. No. L75, 16.3.2002, p. 38),
  - (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 (O.J. No. L209, 6.8.2002, p. 5, as corrected and amended),
  - (v) Commission Directive 2002/78/EC laying down the sampling methods and the methods of analysis for the official control of the levels of patulin in foodstuffs (O.J. 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 (O.J. 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 do not comply with the maxima 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 Article 29 of the Food Safety (Northern Ireland) Order 1991 in its application to the taking of samples of the foods concerned (regulation 5);
- (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 (O.J. No. L186, 30.6.89, p. 23) (regulation 6);
- (e) provide for the application of specified provisions of the Food Safety (Northern Ireland) Order 1991 for the purposes thereof (regulation 7);

- (f) subject to regulation 9, provide for the re-dispatch to non-member States of imported food that fails to comply with certain requirements of regulation 3 but does not pose a serious risk to human health and the destruction of such food where it does pose such a risk (regulation 8);
- (g) establish a process by which food that would otherwise have to be re-dispatched or destroyed under regulation 8 can nevertheless be placed on the market (regulation 9); and
- (h) include transitional provisions (regulations 10 and 11).

3. These Regulations also revoke the Tin in Food Regulations (Northern Ireland) 1992 (regulation 12).

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