

2004 No. 3062

FOOD, ENGLAND

The Contaminants in Food (England) Regulations 2004

Made - - - - *18 November 2004*

Laid before Parliament *25 November 2004*

Coming into force *20th December 2004*

The Secretary of State, in exercise of the powers conferred on him 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^(a), and now vested in him^(b), 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^(c), and in accordance with section 48(4) and (4B) of that Act, makes the following Regulations:

Title, commencement and application

1. These Regulations may be cited as the Contaminants in Food (England) Regulations 2004, shall come into force on 20th December 2004 and shall apply in relation to England only.

Interpretation

2.—(1) In these Regulations —

“the Act” means the Food Safety Act 1990;

“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;

(a) 1990 c. 16.

(b) Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the Food Standards Act 1999 (1999 c. 28). Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act. Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46) as read with section 40(2) of the 1999 Act. Section 17(1) was amended by paragraph 12(a), section 17(2) by paragraph 12(b) and section 48 by paragraph 21, of Schedule 5 to the 1999 Act.

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

“the Commission Regulation” means Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs(a) as corrected by a corrigendum published on 30th November 2001(b), and as amended by Council Regulation (EC) No. 2375/2001(c), Commission Regulation (EC) No. 221/2002(d), Commission Regulation (EC) No. 257/2002(e), Commission Regulation (EC) No. 472/2002(f) as corrected by a corrigendum published on 23rd March 2002(g), Commission Regulation (EC) No. 563/2002(h) as corrected by a corrigendum published on 14th June 2002(i), Commission Regulation (EC) No. 1425/2003(j), Commission Regulation (EC) No. 2174/2003(k), Commission Regulation (EC) No. 242/2004(l), Commission Regulation (EC) No. 455/2004(m) and Commission Regulation (EC) No. 684/2004(n);

“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(o);

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

“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(q) as amended by Commission Directive 2002/27/EC(r), Commission Directive 2003/121/EC(s) and Commission Directive 2004/43/EC(t);

“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(u) as corrected by Commission Decision 2001/873/EC(v);

“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(w) and Commission Directive 2004/43/EC(t);

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

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- (a) 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).
- (b) OJ No. L313, 30.11.2001, p.60, as adopted by EEA Joint Committee Decision No. 81/2002.
- (c) OJ No. L321, 6.12.2001, p.1, as adopted by EEA Joint Committee Decision No. 81/2002.
- (d) 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).
- (e) 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).
- (f) 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).
- (g) OJ No. L80, 23.3.2002, p.42.
- (h) OJ No. L86, 3.4.2002, p.5, as adopted by EEA Joint Committee Decision No. 161/2002.
- (i) OJ No. L155, 14.6.2002, p.63, as adopted by EEA Joint Committee Decision No. 161/2002.
- (j) OJ No. L203, 12.8.2003, p.1.
- (k) OJ No. L326, 13.12.2003, p.12.
- (l) OJ No. L42, 13.2.2004, p.3
- (m) OJ No. L74, 12.3.2004, p.11.
- (n) OJ No. L106, 15.4.2004, p. 6.
- (o) OJ No. L372, 31.12.1985, p.50.
- (p) OJ No. L290, 24.11.1993, p.14.
- (q) 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).
- (r) OJ No. L75, 16.3.2002, p.44, as adopted by EEA Joint Committee Decision No. 161/2002.
- (s) OJ No. L332, 19.12.2003, p.38.
- (t) OJ No. L113, 20.4.2004, p.14.
- (u) OJ No. L77, 16.3.2001, p.14.
- (v) OJ No. L325, 8.12.2001, p.34.
- (w) OJ No. L75, 16.3.2002, p.38.
- (x) OJ No. L209, 6.8.2002, p.5.
- (y) OJ No. L252, 20.9.2002, p.40.
- (z) OJ No. L113, 20.4.2004, p.17.

“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(a);

“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(b);

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

“food authority” includes neither the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and the Middle Temple) nor a port health authority;

“port health authority” means —

- (a) in relation to the London port health district (within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984(c) by section 7(1) of that Act), the Common Council of the City of London; and
- (b) 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; and

“Regulation 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 amending Regulation (EC) No. 178/2002 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.

(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 section 9(2)(a) of the Act as applied for the purposes of these Regulations by regulation 7(2).

(a) OJ No. L203, 12.8.2003, p.40.
(b) OJ No. L42, 13.2.2004, p.16.
(c) 1984 c. 22.

Enforcement

4.—(1) Subject to paragraph (2), it shall be 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 shall 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 shall be 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^(a)), 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^(b), 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;
- (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 has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act 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

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

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

- (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 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 has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act 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 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 has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act 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 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 has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act 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 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 has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act 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 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 has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act the person who analyses the sample shall 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 Directive 85/891/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 sections of the Food Safety Act 1990

7.—(1) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof shall 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” shall be deemed to be a reference to any such requirement as is mentioned in section 33(1)(b) as applied by sub-paragraph (e);
- (g) section 35(1) (punishment of offences), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (e);
- (h) section 35(2) and (3), insofar as it relates to offences under section 33(2) as applied by sub-paragraph (f);
- (i) section 36 (offences by bodies corporate); and
- (j) section 44 (protection of officers acting in good faith).

(2) Subject to paragraph (3), section 9 of the Act (inspection and seizure of suspected food) shall apply 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 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 (England) Regulations 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 subsection (2)(a) above, 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 above 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 subsection (2)(b) or (3)(b) above, 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 above 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 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 considers appropriate in the circumstances, that any food falling to be dealt with by him under this section fails to comply with the requirements of regulation 3(a)(i) or (b)(i) of the above 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 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, 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 subsection (6) above shall be determined by arbitration.

(8) Any person who knowingly contravenes the requirements of a notice under paragraph (a) of subsection (2) above 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 “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), shall, for those purposes, bear the meanings that those expressions respectively bear in these Regulations.

Re-export or destruction of food imported into England 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)(i) or (b)(i) and has been imported into England 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) before 1st January 2005 —

(i) the re-export of the food to a country other than a member State within such reasonable period as shall be specified in the notice, or

(ii) (where such re-export would in his opinion involve serious risks to human health) the destruction of the food within such reasonable period as shall be so specified; and

(b) on or after 1st January 2005 —

- (i) (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 shall be specified in the notice, or
 - (ii) (where the requirements of Article 12 of Regulation 178/2002 are not satisfied) the destruction of the food within such reasonable period as shall be so specified.
- (2) The notice served under paragraph (1) shall 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 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 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and Public Holidays and the making of the complaint shall be 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 (4) shall be by way of complaint for an order, and the Magistrates' Courts Act 1980(a) shall apply to the proceedings.
- (6) If the court allows an appeal brought under paragraph (4) the authority concerned 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 arbitration.
- (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 food imported into England 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),
- 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 —
- (c) deal with the food only in compliance with Article 4.3 of the Commission Regulation; and
 - (d) 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 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 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 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and

(a) 1980 c. 43.

Public Holidays and the making of the complaint shall be 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) shall be by way of complaint for an order, and the Magistrates' Court Act 1980(a) shall apply to the proceedings.

(6) If the court allows an appeal brought under paragraph (3) the authority concerned 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 arbitration.

(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 execution 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.

Consequential amendments

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

“The Contaminants in Food (England) Regulations 2004 (to the extent that a sample falls to be prepared and analysed in accordance with regulation 5 of those Regulations)	S.I. 2004/3062”.
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(a) S.I. 1990/2463; relevant amending instruments are S.I. 1999/1603, S.I. 2002/890 and S.I. 2003/1478.

Revocations

13. The Tin in Food Regulations 1992^(a) insofar as they apply in relation to England and the Contaminants in Food (England) Regulations 2003^(b) shall be revoked.

Signed by authority of the Secretary of State for Health

18 November 2004

Melanie Johnson
Parliamentary Under Secretary of State,
Department of Health

^(a) S.I. 1992/496.
^(b) S.I. 2003/1478.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only and revoke and re-enact with changes the Contaminants in Food (England) Regulations 2003 (S.I. 2003/1478) —

- (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) 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 2002/78/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 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 section 29 of the Food Safety Act 1990 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 (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 England (*regulation 12*).

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

4. A regulatory impact assessment has been prepared for these Regulations and placed in the Library of each of the Houses of Parliament, 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 Chemical Safety Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.

STATUTORY INSTRUMENTS

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