

2007 No. 210

FOOD, ENGLAND

The Contaminants in Food (England) Regulations 2007

<i>Made</i> - - - -	<i>29th January 2007</i>
<i>Laid before Parliament</i>	<i>5th February 2007</i>
<i>Coming into force</i> - -	<i>1st March 2007</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 17(2), 26(1)(a), (2)(e) and (3), and 48(1) of the Food Safety Act 1990(a), and now vested in her(b).

In accordance with section 48(4A) of that Act, she has had regard to relevant advice given by the Food Standards Agency.

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), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title, application and commencement

1. These Regulations may be cited as the Contaminants in Food (England) Regulations 2007, apply in relation to England only and come into force on 1st March 2007.

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 of section 1 of the Annex to the Commission Regulation which complies with the conditions of the derogation under Article 7(2) in relation to the United Kingdom;

(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 as at the making of these Regulations by Commission Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p.3).

“authorised officer” means any person who is authorised in writing, either generally or specifically, by a food authority or as the case may be a port health authority to act in matters arising under these Regulations;

“authorised spinach” means spinach of the kind specified in point 1.1 of section 1 of the Annex to the Commission Regulation which complies with the conditions of the derogation under Article 7(1) in relation to the United Kingdom;

“the Commission Regulation” means Commission Regulation (EC) No.1881/2006 setting maximum levels for certain contaminants in foodstuffs(a);

“food authority” does not include 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(b) 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.

(2) Any other expression used in these Regulations and in the Commission Regulation has the same meaning in these Regulations as it bears in the Commission Regulation.

(3) Any reference to a numbered Article is a reference to the Article so numbered in the Commission Regulation.

Offences, penalties and savings

3.—(1) Subject to paragraphs (3) and (5) and to the transitional arrangements contained in Article 11, a person is guilty of an offence if he contravenes or fails to comply with any of the Community provisions specified in paragraph (2).

(2) The provisions mentioned in paragraph (1) are —

- (a) Article 1(1), (prohibition on the placing on the market of foodstuffs containing contaminants in excess of prescribed limits), as read with Article 4 in the case of groundnuts, nuts, dried fruit and maize;
- (b) Article 3 (prohibitions on use, mixing and detoxification).

(3) Paragraph (1) does not apply to the placing on the market of authorised lettuce or authorised spinach.

(4) Anyone convicted of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) Notwithstanding the revocation of the Contaminants in Food (England) Regulations 2006(c), the transitional arrangements referred to in regulation 3(1) of those Regulations shall apply to an offence under these Regulations in like manner as they applied to an offence under those Regulations.

Enforcement and competent authorities

4.—(1) It shall be the duty of each food authority within its area and each port health authority within its district to execute and enforce these Regulations and the Commission Regulation.

(2) The competent authority for the purposes of Article 2(2) (justification by food business operators of concentration or dilution factors) is the authority having the duty to enforce under paragraph (1).

(a) OJ No. L364, 20.12.2006, p.5.

(b) 1984 c. 22.

(c) S.I. 2006/1464

Application of various sections of the Food Safety Act 1990

5.—(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 purpose of section 14 or 15;
- (d) section 30(8) (which relates to documentary evidence);
- (e) section 33(1) (obstruction etc. of officers);
- (f) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above” 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), in so far as it relates to offences under section 33(2) as applied by sub-paragraph (f);
- (i) section 36 (offences by bodies corporate);
- (j) section 36A (offences by Scottish partnerships); and
- (k) 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 may at all reasonable times inspect any food intended for human consumption which has been placed on the market and subsections (2) to (7) below shall apply where, on such an inspection, it appears to the authorised officer that the placing on the market of any food fails to comply with the requirements specified in regulation 3(2)(a) of the Contaminants in Food (England) Regulations 2007 as read with regulation 3(3) and (5) of those Regulations and with Article 11 of the Commission Regulation, (“the Community requirements”).

(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 sampling in the manner required by Article 8 of the Commission Regulation; 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 Community requirements 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 in connection with regulation 3(2)(a) 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 in connection with regulation 3(2)(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 considers appropriate in the circumstances, that any food falling to be dealt with by him under this section fails to comply with the Community requirements 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 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 subsection (2)(a) 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”, “placing on the market”, “the Commission Regulation” 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.

Consequential amendment

6. In Schedule 1 (provisions to which those Regulations do not apply) to the Food Safety (Sampling and Qualifications) Regulations 1990(a) in so far as they apply in relation to England, for the entry relating to the Contaminants in Food (England) Regulations 2006 there is substituted the following entry —

“The Contaminants in Food (England) Regulations 2007 (to the extent that a sample falls to be prepared and analysed in accordance with the Commission Regulation as that expression is defined in those Regulations) S.I. 2007/210 .”

Revocations

7. The Contaminants in Food (England) Regulations 2006 are revoked.

Signed by authority of the Secretary of State for Health

29th January 2007

Caroline Flint
Minister of State
Department of Health

(a) S.I. 1990/2463; relevant amending instruments are S.I. 1999/1603 and S.I. 2004/3062.

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only, revoke and re-enact with changes the Contaminants in Food (England) Regulations 2006 (S.I. 2006/1464) (“the 2006 Regulations”). They make provision for the 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”). The Commission Regulation consolidates and makes further amendments to the provisions formerly contained in Commission Regulation (EC) No. 466/2001.

2. 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 Community legislation) —
 - (i) to place on the market certain foods if they contain contaminants of any kind specified in the Commission Regulation at levels exceeding those specified (subject to a derogation applicable to certain types of lettuce and to fresh spinach),
 - (ii) to use food containing such contaminants at such levels as ingredients in the production of certain foods,
 - (iii) to mix foods that do not comply with the maximum levels referred to above with foods which do 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*);
- (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 England (*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 Community instruments mentioned in paragraph 3(a) to (f) below.

3. The Commission Regulation specifies the Community 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 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 by Commission Decision 2001/873/EC (OJ No. L325, 8.12.2001, p.34), and as amended by Commission Directive 2005/4/EC (OJ No. L19, 21.1.2005, p.50);
- (b) 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);
- (c) Commission Directive 2005/10/EC laying down the sampling methods and the methods of analysis for the official control of the levels of benzo(a)pyrene in foodstuffs (OJ No. L34, 8.2.2005, p.15), and
- (d) 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);

- (e) 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);
- (f) 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).

4. A full regulatory impact assessment of the effect that this instrument will have on the costs of business has been prepared and placed in the Library of each of the Houses of Parliament. Copies may be obtained from the Chemical Safety Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.

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