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STATUTORY INSTRUMENTS

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**2013 No. 2196**

**The Contaminants in Food (England) Regulations 2013**

**PART 4**

**Administration and enforcement**

**Penalties**

**6.** Anyone convicted of an offence under regulation 4(3) or regulation 5(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

**Enforcement and competent authorities**

**7.—(1)** It is the duty of each food authority within its area or district to execute and enforce these Regulations, Regulation 1881/2006 and Regulation 124/2009.

(2) The competent authority for the purposes of —

- (a) Article 2(2) of Regulation 1881/2006 (justification by food business operators of concentration or dilution factors); and
- (b) Article 1(1) of Regulation 124/2009 (relating to the duty to investigate the reasons for the contamination),

is the authority having the duty to execute and enforce under paragraph (1).

**Application of various sections of the Food Safety Act 1990**

**8.—(1)** The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part of it is to be construed as a reference to these Regulations —

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21 (defence of due diligence)(1) with the modification that—
  - (i) subsections (2) to (4) shall apply in relation to an offence under regulation 4(3) or 5(1) as they apply in relation to an offence under section 14 or 15, and
  - (ii) in subsection (4) the references to “sale” are deemed to include references to “placing on the market”;
- (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);

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(1) Section 21 was amended by [S.I. 2004/3279](#).

- (g) section 35(1) (punishment of offences)(2), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (e);
  - (h) section 35(2) and (3)(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)(4); 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) applies 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 any of the requirements specified in regulation 4(1) or 5(2) of the Contaminants in Food (England) Regulations 2013, (“the EU 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 law; 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, that officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not the food complies with the EU requirements and —

(a) if satisfied that it does comply, shall forthwith withdraw the notice;

(b) if 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, the officer shall inform the person in charge of the food of the intention to have it dealt with by a justice of the peace and —

(a) any person who in connection with any of the EU requirements might be liable to a prosecution in respect of the food shall, if that person 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 any of the EU requirements in relation to that food.

(5) If it appears to a justice of the peace, on the basis of such evidence as the justice considers appropriate in the circumstances, that any food falling to be dealt with under this section fails to comply with any of the EU requirements the justice shall condemn the food and order —

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(2) Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c.44), Schedule 26, paragraph 42, from a date to be appointed.

(3) Section 35(3) was amended by S.I. 2004/3279.

(4) Section 36A was inserted by the Food Standards Act 1999 (1999 c.28), Schedule 5, paragraph 16.

- (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” and “food authority” 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**

**9.** In Schedule 1 to the Food Safety (Sampling and Qualifications) (England) Regulations 2013<sup>(5)</sup> (provisions to which those Regulations do not apply), for the entries relating to the Contaminants in Food (England) Regulations 2010<sup>(6)</sup> substitute the following entries in column 1 and 2 respectively —

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“The Contaminants in Food (England) Regulations 2013 (to the extent [S.I. 2013/2196](#).” that a sample falls to be prepared and analysed in accordance with [Commission Regulation \(EC\) No 1881/2006](#) setting maximum levels for certain contaminants in foodstuffs

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### **Revocations**

**10.** The —

- (a) Mineral Hydrocarbons in Food Regulations 1966<sup>(7)</sup>;
- (b) Erucic Acid in Food Regulations 1977<sup>(8)</sup>;
- (c) Erucic Acid in Food (Amendment) Regulations 1982<sup>(9)</sup>; and
- (d) Contaminants in Food (England) Regulations 2010,

are revoked.

### **Review**

**11.—**(1) The Food Standards Agency must from time to time —

- (a) carry out a review of the operation and effect of regulation 2 to 8 of these Regulations;
- (b) set out the conclusions of the review in a report; and

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(5) [S.I. 2013/264](#).  
(6) [S.I. 2010/2228](#).  
(7) [S.I. 1966/1073](#).  
(8) [S.I. 1977/691](#).  
(9) [S.I. 1982/264](#).

- (c) publish the report.
- (2) In carrying out the review the Agency must, so far as is reasonable, have regard to how the EU instruments mentioned in regulation 2(1) are implemented or executed and enforced in other Member States.
- (3) The report must in particular —
  - (a) set out the objectives intended to be achieved by these Regulations;
  - (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with the day on which these Regulations come into force.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.