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WELSH STATUTORY INSTRUMENTS

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**2009 No. 1386**

**The Contaminants in Food (Wales) Regulations 2009**

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

5.—(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 thereof 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), 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” is to 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) applies for the purposes of these Regulations as if it reads 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 will 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) and (c) of the Contaminants in Food (Wales) Regulations 2009 (“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- (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any specified portion of it —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 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 will, as soon as is reasonably practicable and in any event within 21 days, determine whether or not the food complies with the Community requirements and —

- (a) if satisfied that it does comply, will forthwith withdraw the notice;
- (b) if not so satisfied, will 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, that officer will inform the person in charge of the food of his or her intention to have it dealt with by a justice of the peace and —

- (a) any person who in connection with regulation 3(2)(a) or (c) of the above Regulations might be liable to a prosecution in respect of the food will, if he or she 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) or (c) 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 the justice of the peace considers appropriate in the circumstances, that any food falling to be dealt with under this section fails to comply with the Community requirements the justice must 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 must 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 will be determined by arbitration.

(8) Any person who knowingly contravenes the requirements of a notice under subsection (2)(a) above will 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” (“*swyddog awdurdodedig*”) and “food authority” (“*awdurdod bwyd*”) 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), will, for those purposes, bear the meanings that those expressions respectively bear in these Regulations.