Changes to legislation: *The Contaminants in Food (Scotland) Regulations 2004 is up to date with all changes known to be in force on or before 27 July 2020. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCOTTISH STATUTORY INSTRUMENTS

2004 No. 525

FOOD

The Contaminants in Food (Scotland) Regulations 2004

Made - - - -	*2nd December 2004*
Laid before the Scottish Parliament - - - -	*2nd December 2004*
Coming into force - -	*25th December 2004*

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 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 [F1], and all other powers enabling them in that behalf, having had regard, in accordance with section 48(4A) [F2] of that Act, to relevant advice given by the Food Standards Agency, and after consultation in accordance with section 48(4) and (4B) [F3] of that Act, hereby make the following Regulations:

F1 1990 c. 16; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c. 40), **Schedule 9**, paragraph 6 and by the Food Standards Act 1999 (c. 28) ("the 1999 Act"), Schedule 5, paragraph 10(3); sections 16(1) and 48(1) were amended by the 1999 Act, Schedule 5, paragraph 8; section 17(1) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, Schedule 6; amendments made by Schedule 5 of the 1999 Act shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c. 46) ("the 1998 Act") by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

F2 Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

F3 Section 48(4B) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Contaminants in Food (Scotland) Regulations 2004 and shall come into force on 25th December 2004.

(2) These Regulations extend to Scotland 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 the Commission 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 the Commission Regulation and is intended for human consumption there;

"the Commission Regulation" means Commission Regulation (EC) No. 466/2001[F4] setting maximum levels for certain contaminants in foodstuffs as corrected by a corrigendum published on 30th November 2001 [F5] and as amended by Council Regulation (EC) No. 2375/2001[F6], Commission Regulation (EC) No. 221/2002[F7], Commission Regulation (EC) No. 257/2002[F8], Commission Regulation (EC) No. 472/2002[F9] as corrected by a corrigendum published on 23rd March 2002 [F10], Commission Regulation (EC) No. 563/2002[F11] as corrected by a corrigendum published on 14th June 2002 [F12], Commission Regulation (EC) No. 1425/2003[F13], Commission Regulation (EC) No. 2174/2003[F14], Commission Regulation (EC) No. 242/2004[F15], Commission Regulation (EC) No. 455/2004[F16] and Commission Regulation (EC) No. 684/2004[F17];

"the Community Regulation" means Regulation (EC) No. 178/2002[F18] 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 amended by Regulation (EC) No. 1642/2003[F19];

"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 [F20];

"Directive 93/99/EEC" means Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs [F21];

"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 [F22] as amended by Commission Directive 2002/27/EC[F23], Commission Directive 2003/121/EC[F24] and Commission Directive 2004/43/EC[F25];

"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 [F26] as corrected by Commission Decision 2001/873/EC[F27];

"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 [F28] 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 [F29] as corrected by a corrigendum published on 20th September 2002 [F30] and as amended by Commission Directive 2004/44/EC[F31];

"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 [F32]; and

"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 [F33].

(2) Other expressions used in these Regulations and in the Commission Regulation have the same meaning as in the Commission Regulation.

F4 O.J. No. L 77, 16.3.01, p.1.
F5 O.J. No. L 313, 30.11.01, p.60.
F6 O.J. No. L 321, 6.12.01, p.1.
F7 O.J. No. L 37, 7.2.02, p.4.
F8 O.J. No. L 41, 13.2.02, p.12.
F9 O.J. No. L 75, 16.3.02, p.18.
F10 O.J. No. L 80, 23.3.02, p.42.
F11 O.J. No. L 86, 3.4.02, p.5.
F12 O.J. No. L 155, 14.6.02, p.63.
F13 O.J. No. L 203, 12.8.03, p.1.
F14 O.J. No. L 326, 13.12.03, p.12.
F15 O.J. No. L 42, 13.2.04, p.3.
F16 O.J. No. L 74, 12.3.04, p.11.
F17 O.J. No. L 106, 15.4.04, p.6.
F18 O.J. No. L 31, 1.2.02, p.1.
F19 O.J. No. L 245, 29.9.03, p.4.
F20 O.J. No. L 372, 31.12.85, p.50.
F21 O.J. No. L 290, 24.11.93, p.14.
F22 O.J. No. L 201, 17.7.98, p.93.
F23 O.J. No. L 75, 16.3.02, p.44.
F24 O.J. No. L 332, 19.12.03, p.38.
F25 O.J. No. L 113, 20.4.04, p.14.
F26 O.J. No. L 77, 16.3.01, p.14.
F27 O.J. No. L 325, 8.12.01, p.34.
F28 O.J. No. L 75, 16.3.02, p.38.
F29 O.J. No. L 209, 6.8.02, p.5.
F30 O.J. No. L 252, 20.9.02, p.40.
F31 O.J. No. L 113, 20.4.04, p.17.
F32 O.J. No. L 203, 12.8.03, p.40.
F33 O.J. No. L 42, 13.2.04, p.16.

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) that person 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 the Commission Regulation; or

(ii) that person contravenes Article 2.3, 4.2 or 4a of the Commission Regulation;

(b) on or after 1st January 2005–

(i) that person 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 the Commission Regulation; or

(ii) that person contravenes Article 2.3, 4.2 or 4a of the Commission Regulation.

Enforcement

4. Each food authority shall enforce and execute these Regulations within its area.

Sampling, analysis and modification of section 29 of the Act

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 in relation to lettuce of the kind specified in point 1.3 or 1.4 of section 1 of Annex 1 to the Commission Regulation specified in column 3 of that Section) 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[F34], 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 the Commission 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 the Commission 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 the Commission 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 the Commission 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 the Commission 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 the Commission 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 the Commission 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 to which paragraph (1)(b) applies, and that officer 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

(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 the 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 to which paragraph (1)(c) applies, and that officer 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 Annex II to Directive 2001/22/EC; and

(iv) in the case of analysis for 3–MCPD, meet the criteria specified in paragraph 3.3.2 of Annex II to Directive 2001/22/EC 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 to which paragraph (1)(d) applies, and that officer 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