SCOTTISH STATUTORY INSTRUMENTS

2002 No. 267

FOOD

The Contaminants in Food (Scotland) Regulations 2002

Made - - - -	*6th June 2002*
Laid before the Scottish Parliament - - - -	*7th June 2002*
Coming into force - -	*1st July 2002*

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(a) and (f), 17(2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990(**1**), and of all other powers enabling them in that behalf, having had regard, in accordance with section 48(4A)(**2**) of that Act, to relevant advice given by the Food Standards Agency, and after consultation in accordance with section 48(4) and (4B)(**3**) of that Act, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Contaminants in Food (Scotland) Regulations 2002 and shall come into force on 1st July 2002.

(2) These Regulations shall extend to Scotland only.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Food Safety Act 1990;

"the Commission Regulation" means Commission Regulation (EC) No. 466/2001(**4**) setting maximum levels for certain contaminants in foodstuffs as amended by Council Regulation (EC) No. 2375/2001(**5**), Commission Regulation (EC) No. 221/2002(**6**), Commission

(**1**) 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(2) 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 to the 1999 Act shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c. 46) 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 Scotland Act 1998.

(**2**) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the Food Standards Act 1999.

(**3**) Section 48(4B) was inserted by paragraph 21 of Schedule 5 to the Food Standards Act 1999.

(**4**) O.J. No. L 77, 16.3.01, p.1.

(**5**) O.J. No. L 321, 6.12.01, p.1.

(**6**) O.J. No. L 37, 7.2.02, p.4.

Regulation (EC) No. 257/2002(**7**), Commission Regulation (EC) No. 472/2002(**8**) as corrected by a corrigendum published on 23rd March 2002(**9**) and Commission Regulation (EC) No. 563/2002(**10**);

"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(**11**);

"Directive 93/99/EEC" means Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs(**12**);

"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(**13**) as amended by Commission Directive 2002/27/EC(**14**);

"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(**15**), as corrected by Commission Decision 2001/873/EC(**16**);

"Directive 2002/26/EC" means Commission Directive 2002/26/EC laying down sampling methods and the methods of analysis for the official control of the levels of ochratoxin A in foodstuffs(**17**);

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol signed at Brussels on 17th March 1993; and

"EEA State" means a State which is a Contracting Party to the EEA Agreement.

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

Offences and penalties

3.—(1) Subject to regulations 8 and 9, 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

(**7**) O.J. No. L 41, 13.3.02, p.12.
(**8**) O.J. No. L 75, 16.3.02, p.18.
(**9**) O.J. No. L 80, 23.3.02, p.42.
(**10**) O.J. No. L 86, 3.4.02, p.5.
(**11**) O.J. No. L 372, 31.12.85, p.50.
(**12**) O.J. No. L 290, 24.11.93, p.14.
(**13**) O.J. No. L 201, 17.7.98, p.93.
(**14**) .J. No. L 75, 16.3.02, p.44.
(**15**) O.J. No. L 77, 16.3.01, p.14.
(**16**) O.J. No. L 325, 8.12.01, p.34.
(**17**) O.J. No. L 75, 16.3.02, p.38.

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

(c) that person 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) For the purposes of this regulation–

(a) "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 consumption in the United Kingdom; and

(b) "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 in the United Kingdom.

Enforcement

4. Each food authority shall enforce and execute the provisions of 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 Section 1, 2, 3 or 4 of Annex I to the Commission Regulation, section 29 of the Act shall be modified so as to limit the power to take samples under subsections (b) and (d) of that section to the taking of samples in accordance with the methods of taking samples described or referred to–

(a) (subject to the requirement specified in paragraph (2)) in the Annex to Commission Directive 79/700/EEC establishing Community methods of sampling for the official control of pesticide residues in and on fruit and vegetables(**18**) where the food concerned is of a description specified in Section 1 of Annex I to the Commission Regulation and to the sampling of which food 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 and to the sampling of which food that Directive applies pursuant to Article 1.3 of the Commission Regulation;

(c) 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 and to the sampling of which food that Directive applies pursuant to Article 1.3 of the Commission Regulation; and

(d) 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 and to the sampling of which food that Directive applies pursuant to Article 1.3 of the Commission Regulation.

(2) The requirement referred to in paragraph (1)(a) is that, in the case of lettuce of the kind specified in point 1.3 or 1.4 of Section 1 of Annex I to the Commission Regulation, the minimum number of units required for each laboratory sample shall be ten.

(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 any food to which paragraph (1)(b) applies, the authorised officer shall ensure that–

(a) the sample is prepared in accordance with–

(**18**) O.J. No. L 207, 15.8.79, p.26.

(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; 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 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.

(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)(c) applies, the authorised officer 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 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 to which paragraph (1)(d) applies, the authorised officer 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) in 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/EEC 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 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 paragraph 3.6 of Annex II to Directive 2001/22/EC.

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–

(a) that the food in respect of which the offence is alleged to have been committed was intended for export to a country which has legislation analogous to these Regulations and that it complies with that legislation; and

(b) in the case of export to an EEA State, that the legislation complies with the Commission Regulation.

Application of various sections of the Act

7.—(1) The following provisions of the Act shall apply for the purposes of these Regulations and any reference in those provisions to the Act or Part thereof shall be construed as a reference to these Regulations:–

(a) section 3 (presumption 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 of the Act;

(d) section 30(8) (which relates to documentary evidence);

(e) section 33 (obstruction etc. of officers);

(f) section 35(1) to (3) (punishment of offences) in so far as it relates to offences under section 33(1) and (2) as applied by paragraph (e);

(g) section 36 (offences by bodies corporate);

(h) section 36A (offences by Scottish partnerships); and

(i) section 44 (protection of officers acting in good faith).

(2) Subject to paragraphs (3) and (4), 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–

(a) has been sold or is offered or exposed for sale; or

(b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale,

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 (other than authorised spinach or authorised lettuce) contravenes regulation 3(1)(a)(i) of the Contaminants in Food (Scotland) Regulations 2002 or that the placing on the market of any food (other than authorised spinach) contravenes regulation 3(1)(b)(i) of those Regulations.

(2) The authorised officer may either–