WELSH STATUTORY INSTRUMENTS

2009 No. 1386 (W.142)

FOOD, WALES

The Contaminants in Food (Wales) Regulations 2009

Made - - - -	*8 June 2009*
Laid before the National Assembly for Wales - -	*10 June 2009*
Coming into force - -	*1 July 2009*

The Welsh Ministers, make the following Regulations in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 17(2), 26(1)(a) and (3) and 48(1) of the Food Safety Act 1990(**1**), as read with paragraph 1A of Schedule 2 to the European Communities Act 1972(**2**).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for references to the Community instrument as specified in regulation 2(3) to be construed as references to that instrument as amended from time to time.

In accordance with section 48(4A) of that Act, they have 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(**3**), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title, application and commencement

1. The title of these Regulations is the Contaminants in Food (Wales) Regulations 2009, they apply in relation to Wales and they come into force on 1 July 2009.

(**1**) 1990 c. 16. Section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by Schedule 5 to the Food Standards Act 1999 (c. 28), ("the 1999 Act"). Section 48 was also amended by S.I. 2004/2990. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1999 c. 40), Schedule 6 to the 1999 Act and S.I. 2004/2990.
Functions so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the 1999 Act. Functions of the National Assembly for Wales are now exercised by the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**2**) 1972 c. 68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c. 51).

(**3**) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Commission Regulation (EC) No. 2002/2008 amending Regulation (EC) No. 178/2002 of the European Parliament and of the Council as regards the number and names of the permanent Scientific Panels of the European Food Safety Authority (OJ No. L60, 5.3.2008, p.17).

Interpretation

2.—(1) In these Regulations —

"the Act" ("*y Ddeddf*") means the Food Safety Act 1990;

"authorised officer" ("*swyddog awdurdodedig*") 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;

"the Commission Regulation" ("*Rheoliad y Comisiwn*") means Commission Regulation (EC) No.1881/2006 setting maximum levels for certain contaminants in foodstuffs(**4**);

"Commission Regulation 629/2008" ("*Rheoliad Comisiwn 629/2008*") means Commission Regulation (EC) No. 629/2008 amending Regulation (EC) No 1881/2006 setting maximum levels for certain contaminants in foodstuffs(**5**);

"Commission Regulation 124/2009" ("*Rheoliad Comisiwn 124/2009*") means Commission Regulation (EC) No. 124/2009 setting maximum levels for the presence of coccidiostats or histomonostats in food resulting from the unavoidable carry over of these substances in non target feed(**6**);

"food authority" ("*awdurdod bwyd*") does not include a port health authority;

"port health authority" ("*awdurdod iechyd porthladd*") means in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984(**7**), 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 or in Commission Regulation 124/2009 has the same meaning in these Regulations as it bears in the Commission Regulation.

(3) Unless indicated otherwise, any reference to a numbered Article is a reference to the Article so numbered in the Commission Regulation.

(4) Any reference to the Annex is a reference to the Annex to the Commission Regulation as that Annex may be amended from time to time, and any reference to the Commission Regulation is to be construed accordingly.

Offences and penalties

3.—(1) Subject to the transitional arrangements contained in Article 11 and in Article 2 of the Commission Regulation 629/2008, a person who contravenes or fails to comply with any of the Community provisions specified in paragraph (2) is guilty of an offence.

(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 contained in the Annex), as read with the Annex and, in the case of groundnuts, nuts, dried fruit and maize, with Article 4;

(b) Article 3 (prohibitions on use, mixing and detoxification);

(c) Article 1(1) of Commission Regulation 124/2009 (prohibitions on marketing or mixing foods containing coccidiostats or histomonostats at levels in excess of prescribed limits).

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

(**4**) OJ No. L364, 20.12.2006, p.5. This Regulation has been amended by Commission Regulations (EC) No's 1126/2007 (OJ No. L255, 29.9.2007, p.14), 565/2008 (OJ No. L160, 19.6.2008, p.20) and 629/2008 (OJ No. L173, 3.7.2008, p.6).
(**5**) OJ No. L173, 3.7.2008, p.6.
(**6**) OJ No. L40, 11.2.2009, p.7.
(**7**) 1984 c. 22.

Enforcement and competent authorities

4.—(1) It is 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 and Commission Regulation 124/2009.

(2) The competent authority for the purposes of —

(a) Article 2(2) (justification by food business operators of concentration or dilution factors), and

(b) Article 1(1) of Commission Regulation 124/2009 (relating to the duty to investigate the reasons for the contamination)

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

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