WELSH STATUTORY INSTRUMENTS

2007 No. 840 (W.73)

FOOD, WALES

The Contaminants in Food (Wales) Regulations 2007

Made - - - -	*13 March 2007*
Coming into force - -	*15 March 2007*

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 17(2), 26(1)(a), (2)(e) and (3), and 48(1) of the Food Safety Act 1990(**1**).

In accordance with section 48(4A) of that Act, the National Assembly for Wales has 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(**2**), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Title and commencement

1. The title of these Regulations is the Contaminants in Food (Wales) Regulations 2007 and they come into force on 15 March 2007.

Interpretation

2.—(1) In these Regulations —

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

"authorised lettuce" ("*letus awdurdodedig*") means lettuce of the kind specified in point 1.3 of section 1 of the Annex to the Commission Regulation which complies with the conditions of the derogation under Article 7(2) in relation to the United Kingdom;

"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;

(**1**) 1990 c. 16. Functions formerly exercised by the "Secretary of State" so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I 1999/672 as read with section 40(3) of the Food Standards Act 1999 (1999 c. 28).

(**2**) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended as at the making of these Regulations by Commission Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p.3).

"authorised spinach" ("*ysbigoglys awdurdodedig*") means spinach of the kind specified in point 1.1 of section 1 of the Annex to the Commission Regulation which complies with the conditions of the derogation under Article 7(1) in relation to the United Kingdom;

"the Commission Regulation" ("*Rheoliad y Comisiwn*") means Commission Regulation (EC) No.1881/2006 setting maximum levels for certain contaminants in foodstuffs(**3**);

"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, 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 has the same meaning in these Regulations as it bears in the Commission Regulation.

(3) Any reference to a numbered Article is a reference to the Article so numbered in the Commission Regulation.

Offences, penalties and savings

3.—(1) Subject to paragraphs (3) and (5) and to the transitional arrangements contained in Article 11, a person is guilty of an offence if he or she contravenes or fails to comply with any of the Community provisions specified in paragraph (2).

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

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

(3) Paragraph (1) does not apply to the placing on the market of authorised lettuce or authorised spinach.

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

(5) Notwithstanding the revocation of the Contaminants in Food (Wales) (No.2) Regulations 2006(**4**), the transitional arrangements referred to in regulation 3(1) of those Regulations apply to an offence under these Regulations in like manner as they applied to an offence under those Regulations.

Enforcement and competent authorities

4.—(1) It is be 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.

(2) The competent authority for the purposes of Article 2(2) (justification by food business operators of concentration or dilution factors) 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);

(**3**) OJ No. L364, 20.12.2006, p.5.
(**4**) S.I. 2006/1850 (W.193)

(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 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 the requirements specified in regulation 3(2)(a) of the Contaminants in Food (Wales) Regulations 2007 as read with regulation 3(3) and (5) of those Regulations and with Article 11 of the Commission Regulation, ("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 Article 8 of the Commission Regulation; 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, he or she must, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he or she is satisfied that the food complies with the Community requirements and —

(a) if he or she is so satisfied, must forthwith withdraw the notice;

(b) if he or she is not so satisfied, must 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, he or she must 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) of the above Regulations might be liable to a prosecution in respect of the food must, 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