WELSH STATUTORY INSTRUMENTS

2006 No. 1850 (W.193)

FOOD, WALES

The Contaminants in Food (Wales) (No. 2) Regulations 2006

Made - - - -	*11 July 2006*
Coming into force - -	*13 July 2006*

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**), and now vested in it(**2**).

In accordance with section 48(4A) of that Act, it 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(**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) (No. 2) Regulations 2006, they apply in relation to Wales and come into force on 13 July 2006.

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 Annex I to the Commission Regulation, which complies with the conditions of the derogation under Article 3b.2 of that Regulation 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.
(**2**) Functions of the Secretary of State under the Food Safety Act 1990, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).
(**3**) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (OJ No. L245, 29.9.2003, p.4).

"authorised spinach" ("*sbigoglys awdurdodedig*") means spinach of the kind specified in point 1.1 of section 1 of Annex I to the Commission Regulation, which complies with the conditions of the derogation under Article 3b.1 of that Regulation in relation to the United Kingdom;

"the Commission Regulation" ("*Rheoliad y Comisiwn*") means Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs(**4**) as corrected by a corrigendum published on 30 November 2001(**5**), and as amended by Council Regulation (EC) No. 2375/2001(**6**), Commission Regulation (EC) No. 221/2002(**7**), Commission Regulation (EC) No. 257/2002(**8**), Commission Regulation (EC) No. 472/2002(**9**) as corrected by a corrigendum published on 23 March 2002(**10**), Commission Regulation (EC) No. 563/2002(**11**) as corrected by a corrigendum published on 14 June 2002(**12**), Commission Regulation (EC) No. 1425/2003(**13**)), Commission Regulation (EC) No. 2174/2003(**14**)), Commission Regulation (EC) No. 242/2004(**15**)), Commission Regulation (EC) No. 455/2004(**16**), Commission Regulation (EC) No. 655/2004(**17**), Commission Regulation (EC) No. 683/2004(**18**), Commission Regulation (EC) No. 684/2004(**19**), Commission Regulation (EC) No. 78/2005(**20**), Commission Regulation (EC) No. 123/2005(**21**), Commission Regulation (EC) No. 208/2005(**22**), Commission Regulation (EC) No. 856/2005(**23**) Commission Regulation (EC) No. 1822/2005(**24**), and Commission Regulation (EC) No. 199/2006(**25**));

"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(**26**)), 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.

Offences and penalties

3.—(1) Subject to the transitional arrangements contained in the Community provisions specified in paragraph (2), a person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale if—

(**4**) OJ No. L77, 16.3.2001, p.1. Article 1.3 of and Annex I to this Regulation specify the Community methods of sampling and analysis that are required to be used for the official control of levels of the substances covered by the Regulation. These methods are set out in Commission Directives 2001/22/EC, 2002/63/EC, 2002/69/EC, 2004/16/EC and 2005/10/EC, and in Commission Regulation (EC) 401/2006. More details of those instruments are given in the Explanatory Note to this instrument.
(**5**) OJ No. L313, 30.11.2001, p.60.
(**6**) OJ No. L321, 6.12.2001, p.1.
(**7**) OJ No. L37, 7.2.2002, p.4.
(**8**) OJ No. L41, 13.2.2002, p.12.
(**9**) OJ No. L75, 16.3.2002, p.18.
(**10**) OJ No. L80, 23.3.2002, p.42.
(**11**) OJ No. L86, 3.4.2002, p.5.
(**12**) OJ No. L155, 14.6.2002, p.63.
(**13**) OJ No. L203, 12.8.2003, p.1.
(**14**) OJ No. L326, 13.12.2003, p.12.
(**15**) OJ No. L42, 13.2.2004, p.3.
(**16**) OJ No. L74, 12.3.2004, p.11.
(**17**) OJ No. L104, 8.4.2004, p.48.
(**18**) OJ No. L106, 15.4.2004, p.3.
(**19**) OJ No. L106, 15.4.2004, p.6.
(**20**) OJ No. L16, 20.1.2005, p.43.
(**21**) OJ No. L25, 28.1.2005, p.3.
(**22**) OJ No. L34, 8.2.2005, p.3.
(**23**) OJ No. L143, 7.6.2005, p.3.
(**24**) OJ No. L293, 9.11.2005, p.11.
(**25**) OJ No. L32, 4.2.2006, p.34.
(**26**) 1984 c. 22.

(a) that person places on the market any food (other than authorised lettuce or 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 that Regulation; or

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

(2) The Community provisions mentioned in paragraph (1) are—

(a) Article 7 of the Commission Regulation;

(b) Article 2 of Commission Regulation (EC) No. 655/2004 amending Regulation (EC) No. 466/2001 as regards nitrate in foods for infants and young children;

(c) Article 3 of Commission Regulation (EC) No. 683/2004 amending Regulation (EC) No. 466/2001 as regards aflatoxins and ochratoxin A in foods for infants and young children;

(d) Article 2 of Commission Regulation (EC) No. 123/2005 amending Regulation (EC) No. 466/2001 as regards ochratoxin A;

(e) Article 2 of Commission Regulation (EC) No. 208/2005 amending Regulation (EC) No. 466/2001 as regards polycyclic aromatic hydrocarbons;

(f) Article 2 of Commission Regulation (EC) No. 856/2005 amending Regulation (EC) No. 466/2001 as regards Fusarium toxins;

(g) Article 2 of Commission Regulation (EC) No. 199/2006 amending Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs as regards dioxins and dioxin-like PCBs.

Enforcement

4. 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.

Application of various sections of the Food Safety Act 1990

5.—(1) The following provisions of the Act will apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof will 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" will 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); and

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