STATUTORY RULES OF NORTHERN IRELAND

2013 No. 229

FOOD

The Contaminants in Food Regulations (Northern Ireland) 2013

Made - - - -	*23rd September 2013*
Coming into operation	*31st October 2013*

The Department of Health, Social Services and Public Safety [F1] makes the following Regulations in exercise of the powers conferred by Articles 15(1), 16(1) and (2), 25(1)(a) and 3, 26(3) and 47(2) of the Food Safety (Northern Ireland) Order 1991 [F2], as read with paragraph 1A of Schedule 2 to the European Communities Act 1972 [F3].

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Department of Health, Social Services and Public Safety that it is expedient for references to an Article of or Annex to the EU instruments specified in regulation 2(3) to be construed as references to that Article or Annex as it may be amended from time to time.

In accordance with Article 47(3A) of that Order, 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 [F4], there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

F1 Formerly the Department of Health and Social Services; see S.I. 1999/283 (N.I.1) Article 3(6)

F2 S.I. 1991/762 (N.I.7) as amended by S.I. 1996/1663 (N.I.12), **paragraphs 26 to 42** of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c.28 and S.R. 2004 Nos. 482 and 505

F3 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51) and amended by Part 1 of Schedule 1 to the European Union (Amendment) Act 2008 (2008 c.7)

F4 OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Commission Regulation (EC) No. 596/2009 of the European Parliament and of the Council adopting a number of instruments subject to the procedure referred to in Article 251 of the Treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adoption to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p14)

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Contaminants in Food Regulations (Northern Ireland) 2013 and come into operation on 31st October 2013.

Interpretation

2.—(1) In these Regulations —

F5 …

F5 …

"Regulation 1881/2006" means Commission Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs F6;

F5 …

"Regulation 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 F7;

F5 …

"the Order" means the Food Safety (Northern Ireland) Order 1991.

(2) Any other expression used in these Regulations and in F8... Regulation 1881/2006 or Regulation 124/2009 has the same meaning in these Regulations as it bears in F9... Regulation concerned.

[F10(3) Subject to regulation 2(4), any reference to an EU instrument is a reference to it as amended at the date of making these Regulations.**]**

(4) Any reference to an Article of or Annex to F11... Regulation 1881/2006 or Regulation 124/2009 is a reference to that Article or Annex as it may be amended from time to time.

(5) The Interpretation Act (Northern Ireland) 1954 F12 shall apply to these regulations as it applies to an Act of the Assembly.

F5 Words in reg. 2(1) omitted (11.2.2019) by virtue of The Food (Miscellaneous Amendments and Revocations) Regulations (Northern Ireland) 2019 (S.R. 2019/5), regs. 1(1), **26(2)(a)**

F6 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), 629/2008 (OJ No. L173, 3.7.2008, p.6), and by Commission Regulations (EU) No's 105/2010 (OJ No.L35, 6.2.2010, p.7), 165/2010 (OJ No. L50, 27.2.2010, p.8), 420/2011 (OJ No. L111, 30.4.2011, p.3), 835/2011 (OJ No. L215, 20.8.2011, p.4), 1258/2011 (OJ No. L320, 3.12.2011, p.15), 1259/2011 (OJ No. L320, 3.12.2011, p.18), 594/2012 (OJ No. L176, 6.7.2012, p.43) and 1058/2012 (OJ No. L313, 13.11.2012, p.14)

F7 OJ No. L40, 11.2.2009, p.7. This Regulation has been amended by Commission Regulation (EU) No. 610/2012 (OJ No. L178, 10.7.2012, p.1)

F8 Words in reg. 2(2) omitted (11.2.2019) by virtue of The Food (Miscellaneous Amendments and Revocations) Regulations (Northern Ireland) 2019 (S.R. 2019/5), regs. 1(1), **26(2)(b)(i)**

F9 Words in reg. 2(2) omitted (11.2.2019) by virtue of The Food (Miscellaneous Amendments and Revocations) Regulations (Northern Ireland) 2019 (S.R. 2019/5), regs. 1(1), **26(2)(b)(ii)**

F10 Reg. 2(3) substituted (17.1.2014) by The Contaminants in Food (Amendment) Regulations (Northern Ireland) 2013 (S.R. 2013/296), regs. 1, **2(2)**
F11 Words in reg. 2(4) omitted (11.2.2019) by virtue of The Food (Miscellaneous Amendments and Revocations) Regulations (Northern Ireland) 2019 (S.R. 2019/5), regs. 1(1), **26(2)(c)**
F12 1954 c.33

PART 2

Erucic acid in food

Scope

F13 3. . . . . . .

F13 Reg. 4 omitted (11.2.2019) by virtue of The Food (Miscellaneous Amendments and Revocations) Regulations (Northern Ireland) 2019 (S.R. 2019/5), regs. 1(1), **26(3)**

Controls on erucic acid

F13 4. . . . . . .

F13 Reg. 4 omitted (11.2.2019) by virtue of The Food (Miscellaneous Amendments and Revocations) Regulations (Northern Ireland) 2019 (S.R. 2019/5), regs. 1(1), **26(3)**

PART 3

Contaminants in food

Controls on contaminants in food

5.—**[**F14(1) A person who contravenes or fails to comply with any of the EU provisions specified in paragraph (2) is guilty of an offence.**]**

(2) The EU provisions are —

(a) Article 1(1) of Regulation 1881/2006 (prohibition on the placing on the market of foodstuffs containing contaminants in excess of prescribed limits contained in the Annex), as read with—

(i) Article 1(2) (maximum levels applying to edible part of food unless otherwise specified in the Annex),

(ii) Article 2 (provisions relating to the application of maximum levels to dried, diluted, processed and compound foodstuffs),

(iii) Article 4 (specific provisions for groundnuts, other oilseeds, tree nuts, dried fruit, rice and maize),

(iv) Article 6 (specific provisions for lettuce) and

(v) the Annex (maximum levels for certain contaminants in foodstuffs);

(b) Article 3 of Regulation 1881/2006 (prohibitions on use, mixing and detoxification);

(c) Article 5 of Regulation 1881/2006 (specific labelling requirements for groundnuts, other oilseeds, derived products thereof and cereals); and

(d) Article 1(1) of Regulation 124/2009 (prohibitions on marketing or mixing foods containing coccidiostats or histomonstats at levels in excess of prescribed limits), as read with Article 1(2).

[F15(3) The level of erucic acid in a food must be determined according to sampling methods, and methods of analysis that meet the performance criteria, set out in the Annex to Commission Regulation (EU) 2015/705 laying down methods of sampling and performance criteria for the methods of analysis for the official control of the levels of erucic acid in foodstuffs and repealing Commission Directive 80/891/EEC.**]**

F14 Reg. 5(1) substituted (11.2.2019) by The Food (Miscellaneous Amendments and Revocations) Regulations (Northern Ireland) 2019 (S.R. 2019/5), regs. 1(1), **26(4)(a)**

F15 Reg. 5(3) inserted (11.2.2019) by The Food (Miscellaneous Amendments and Revocations) Regulations (Northern Ireland) 2019 (S.R. 2019/5), regs. 1(1), **26(4)(b)**

PART 4

Administration and enforcement

Penalties

6. Anyone convicted of an offence under F16... regulation 5(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

F16 Words in reg. 6 omitted (11.2.2019) by virtue of The Food (Miscellaneous Amendments and Revocations) Regulations (Northern Ireland) 2019 (S.R. 2019/5), regs. 1(1), **26(5)**

Enforcement and competent authorities

7.—(1) It is the duty of each district council within its district to execute and enforce —

(a) these regulations;

(b) Commission Regulation 1881/2006; and

(c) Commission Regulation 124/2009, save for the requirement in paragraph 2 of Article 1(1) of that Regulation (requirement to investigate the reasons for a finding of a significant residue level below the maximum).

(2) The competent authority for the purposes of Article 2(2) of Commission Regulation 1881/2006 (justification by food business operators of concentration or dilution factors) is the district council having the duty to enforce under paragraph (1).

(3) The competent authority for the purposes of paragraph 2 of Article 1(1) of Commission Regulation 124/2009 (requirement to investigate the reasons for a finding of a significant residue level below the maximum) is the Department of Agriculture and Rural Development.

(4) It is the duty of the Department of Agriculture and Rural Development to execute and enforce paragraph 2 of Article 1(1) of Commission Regulation 124/2009 (requirement to investigate the reasons for a finding of a significant residue level below the maximum).

Application of various Articles of the Food Safety (Northern Ireland) Order 1991

8.—(1) The following provisions of the Order apply for the purposes of these Regulations with the modification that any reference in those provisions to the Order or Part of it is to be construed as a reference to these Regulations —

(a) Article 4 (presumptions that food intended for human consumption);

(b) Article 19 (offences due to fault of another person);

(c) Article 20 (defence of due diligence) with the modification that—

(i) paragraphs (2) to (4) apply in relation to an offence under regulation [F17]... 5(1) as they apply in relation to an offence under Article 13 or 14, and

(ii) in paragraph (4) the references to "sale" are deemed to include references to "placing on the market";

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

(e) Article 34(1) (obstruction etc. of officers);

(f) Article 34(2), with the modification that the reference to "any such requirement as is mentioned in paragraph (1)(b)" shall be deemed to be a reference to any such requirement as is mentioned in Article 34(1)(b) as applied by sub–paragraph (e);

(g) Article 36(1) (punishment of offences), in so far as it relates to offences under Article 34(1) as applied by sub–paragraph (e); and

(h) Article 36(2) and (3), in so far as it relates to offences under Article 34(2) as applied by sub–paragraph (f).

(2) Subject to paragraph (3), Article 8 of the Order (inspection and seizure of suspected food) applies for the purposes of these Regulations as if it read as follows —

"**8.**—(1) An authorised officer may at all reasonable times inspect any food intended for human consumption which has been placed on the market and paragraphs (2) to (7) 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 [F18]... 5(2) of the Contaminants in Food Regulations (Northern Ireland) 2013 ("the EU 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

(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 gives notice under paragraph (2)(a), that officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not the food complies with the EU requirements and —

(a) if satisfied that it does comply, shall forthwith withdraw the notice;

(b) if not so satisfied, shall seize the food and remove it in order to have it dealt with by a justice of the peace.

(4) Where an authorised officer seizes and removes food under paragraph (2)(b) or (3)(b), the officer shall inform the person in charge of the food of the intention to have it dealt with by a justice of the peace and —