STATUTORY RULES OF NORTHERN IRELAND

2010 No. 335

FOOD

The Contaminants in Food Regulations (Northern Ireland) 2010

Made - - - -	*24th September 2010*
Coming into operation	*20th October 2010*

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

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 the Annex to the EU instrument as specified in regulation 2(3) to be construed as references to that 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(**4**), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

Citation and commencement

1. These Regulations may be cited as the Contaminants in Food Regulations (Northern Ireland) 2010 and come into operation on 20th October 2010.

Interpretation

2.—(1) In these Regulations —

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

(**2**) 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

(**3**) 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)

(**4**) 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)

"Commission Regulation 1881/2006" means Commission Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs(**5**) as amended at the date of making these Regulations;

"Commission Regulation 629/2008" means Commission Regulation (EC) No. 629/2008 amending Regulation (EC) No 1881/2006 setting maximum levels for certain contaminants in foodstuffs(**6**);

"Commission 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(**7**);

"Commission Regulation 165/2010" means Commission Regulation (EU) No. 165/2010 amending Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs as regards aflatoxins(**8**);

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

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

(3) Any reference to "the Annex" is a reference to the Annex to Commission Regulation 1881/2006 as that Annex may be amended from time to time, and any reference to that Regulation is to be construed accordingly.

(4) The Interpretation Act (Northern Ireland) 1954(**9**) shall apply to these regulations as it applies to an Act of the Assembly.

Offences and penalties

3.—(1) Subject to the transitional arrangements contained in —

(a) Article 11 of Commission Regulation 1881/2006;

(b) Article 2 of Commission Regulation 629/2008; or

(c) Article 2 of Commission Regulation 165/2010,

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 Commission 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 the Annex and, in the case of groundnuts, other oilseeds, tree nuts, dried fruit, rice and maize, with Article 4;

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

(c) Article 1(1) of Commission Regulation 124/2009 (prohibitions on marketing or mixing foods containing coccidiostats or histomonstats 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.

(**5**) 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), 105/2010 (OJ No.L35, 6.2.2010, p.7) and 165/2010 (OJ No. L50, 27.2.2010, p.8)
(**6**) OJ No. L173, 3.7.2008, p.6
(**7**) OJ No. L40, 11.2.2009, p.7
(**8**) OJ No. L50, 27.2.2010, p.8
(**9**) 1954 c.33

Enforcement and competent authorities

4.—(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.

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

5.—(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 3 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 3(2)(a) and (c) of the Contaminants in Food Regulations (Northern Ireland) 2010 ("the EU requirements").

(2) The authorised officer may either —