STATUTORY RULES OF NORTHERN IRELAND

2007 No. 66

FOOD

The Contaminants in Food Regulations (Northern Ireland) 2007

Made - - - - 6th February 2007

Coming into operation 1st March 2007

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**).

It has had regard to relevant advice given by the Food Standards Agency as required by Article 47(3A) of that Order.

There has been open and transparent public consultation during the preparation of the Regulations as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council(**3**) 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.

Citation and commencement

1. These Regulations may be cited as the Contaminants in Food Regulations (Northern Ireland) 2007 and come into operation on 1st March 2007.

Interpretation

2.—(1) In these Regulations —

"authorised lettuce" 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" means any person, whether or not an officer of a district council, who is authorised by it in writing to act in matters arising under 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**) OJ No. L31, 1.2.2002, p. 1 as last amended by Commission Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p3) 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. L100, 8.4.2006, p.3). By virtue of Regulation 5 of the Food Safety (Northern Ireland) Order 1991 (Amendment) Regulations (Northern Ireland) 2004 (S.R. 2004 No.482), with effect from 7th December 2004 the consultation requirement contained in Article 47(3) of the 1991 Order is disapplied in any case in which consultation Is required by Article 9 of Regulation (EC) No. 178/2002

"authorised spinach" 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" means Commission Regulation (EC) No.1881/2006(**4**) setting maximum levels for certain contaminants in foodstuffs;

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

(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 contravenes or fails to comply with 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 Regulations (Northern Ireland) 2006(**5**), the transitional arrangements referred to in regulation 3(1) of those Regulations shall 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 shall be the duty of each district council 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 Articles of the Food Safety (Northern Ireland) Order 1991

5.—(1) The following provisions of the Order shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Order or Part thereof shall 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), as it applies for the purpose of Article 13 or 14;

(**4**) OJ No. L364, 20.12.2006, p.5
(**5**) S.R. 2006 No.256

(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) shall apply 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) of the Contaminants in Food Regulations (Northern Ireland) 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 gives notice under paragraph (2)(a), he shall, as soon as is reasonably practicable and in any event before the expiration of 21 days from the date of notice, determine whether or not he is satisfied that the food complies with the Community requirements, and —

(a) if he is so satisfied, shall forthwith withdraw the notice;

(b) if he is 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), he shall inform the person in charge of the food of his 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 Regulations might be liable to a prosecution in respect of the food shall, if he 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

(b) that justice of the peace may, but need not, be a member of the court before which any person is proceeded against for an offence in connection with regulation 3(2)(a) of the Regulations in relation to that food.

(5) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any food falling to be dealt with by him under this