STATUTORY RULES OF NORTHERN IRELAND

2005 No. 538

FOOD

The Contaminants in Food Regulations (Northern Ireland) 2005

Made - - - -	*1st December 2005*
Coming into operation	*1st January 2006*

The Department of Health, Social Services and Public Safety(**1**), makes the following Regulations in exercise of the powers conferred on it by Articles 15(1)(a), (e) and (f), 16(1) and (2), 25(1)(a) and (3), 26(3), 32(1) and (2)(b), (c) and (f) and 47(2) of the Food Safety (Northern Ireland) Order 1991(**2**).

In accordance with Article 47(3A) of the said 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(**3**), 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) 2005 and shall come into operation on 1st January 2006.

Interpretation

2.—(1) In these Regulations—

"authorised lettuce" 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 spinach" 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;

(**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**) O.J. 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 (O.J. No. L245, 29.9.2003, p. 4)

"the Commission Regulation" means Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs(**4**) as corrected by a corrigendum published on 30th 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 23rd March 2002(**10**), Commission Regulation (EC) No. 563/2002(**11**) as corrected by a corrigendum published on 14th 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**) and Commission Regulation (EC) No.1822/2005(**23**);

"The Department" means the Department of Health Social Services and Public Safety;

"Directive 98/53/EC" means Commission Directive 98/53/EC laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs(**24**) as amended by Commission Directive 2002/27/EC(**25**), Commission Directive 2003/121/EC(**26**) and Commission Directive 2004/43/EC(**27**);

"Directive 2001/22/EC" means Commission Directive 2001/22/EC laying down the sampling methods and the methods of analysis for the official control of the levels of lead, cadmium, mercury and 3-MCPD in foodstuffs(**28**) as corrected by Commission Decision 2001/873/EC(**29**) and as amended by Commission Directive 2005/4/EC(**30**);

"Directive 2002/26/EC" means Commission Directive 2002/26/EC laying down the sampling methods and the methods of analysis for the official control of the levels of ochratoxin A in foodstuffs(**31**) as amended by Commission Directive 2004/43/EC and Commission Directive 2005/5/EC(**32**));

(**4**) O.J. No. L77, 16.3.2001, p. 1
(**5**) O.J. No. L313, 30.11.2001, p. 60
(**6**) O.J. No. L321, 6.12.2001, p. 1
(**7**) O.J. No. L37, 7.2.2002, p. 4
(**8**) O.J. No. L41, 13.2.2002, p. 12
(**9**) O.J. No. L75, 16.3.2002, p. 18
(**10**) O.J. No. L80, 23.3.2002, p. 42
(**11**) O.J. No. L86, 3.4.2002, p. 5
(**12**) O.J. No. L155, 14.6.2002, p. 63
(**13**) O.J. No. L203, 12.8.2003, p. 1
(**14**) O.J. No. L326, 13.12.2003, p. 12
(**15**) O.J. No. L42, 13.2.2004, p. 3
(**16**) O.J. No. L74, 12.3.2004, p. 11
(**17**) O.J. No. L104, 8.4.2004, p. 48
(**18**) O.J. No. L106, 15.4.2004, p. 3
(**19**) O.J. No. L106, 15.4.2004, p. 6
(**20**) O.J. No. L16, 20.1.2005, p. 43
(**21**) O.J. No. L25, 28.1.2005, p. 3
(**22**) O.J. No. L34, 8.2.2005, p. 3
(**23**) O.J. No. L293, 9.11.2005, p11
(**24**) O.J. No. L201, 17.7.1998, p. 93
(**25**) O.J. No. L75, 16.3.2002, p. 44,
(**26**) O.J. No. L332, 19.12.2003, p. 38
(**27**) O.J. No. L113, 20.4.2004, p. 14
(**28**) O.J. No. L77, 16.3.2001, p. 14
(**29**) O.J. No. L325, 8.12.2001, p. 34
(**30**) O.J. No. L19, 21.1.2005, p. 50
(**31**) O.J. No. L75, 16.3.2002, p. 38
(**32**) O.J. No. L27, 29.1.2005, p. 38

"Directive 2002/69/EC" means Commission Directive 2002/69/EC laying down the sampling methods and the methods of analysis for the official control of dioxins and the determination of dioxin-like PCBs in foodstuffs(**33**)) as corrected by a corrigendum published on 20th September 2002(**34**)) and as amended by Commission Directive 2004/44/EC(**35**));

"Directive 2003/78/EC" means Commission Directive 2003/78/EC laying down the sampling methods and the methods of analysis for the official control of the levels of patulin in foodstuffs(**36**));

"Directive 2004/16/EC" means Commission Directive 2004/16/EC laying down the sampling methods and the methods of analysis for the official control of the levels of tin in canned foods(**37**);

"Directive 2005/10/EC" means Commission Directive 2005/10/EC laying down the sampling methods and the methods of analysis for the official control of the levels of benzo(a)pyrene in foodstuffs(**38**);

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

"Regulation 882/2004" means Regulation (EC) No. 882/2004 of the European Parliament and of the Council on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules(**39**).

(2) Other expressions 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 shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale if—

(a) he 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) he 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 the Regulation (EC) No 466/2001 as regards polycyclic aromatic hydrocarbons.

(**33**) O.J. No. L209, 6.8.2002, p. 5
(**34**) O.J. No. L252, 20.9.2002, p. 40
(**35**) O.J. No. L113, 20.4.2004, p. 17
(**36**) O.J. No. L203, 12.8.2003, p. 40
(**37**) O.J. No. L42, 13.2.2004, p. 16
(**38**) O.J. No. L34, 8.2.2005, p. 15
(**39**) O.J. No. L165, 30.4.04, p. 1. The revised text of this Regulation is now set out in a Corrigendum (O.J. No. L191, 28.5.2004, p. 1)

Enforcement

4. Each district council shall execute and enforce these Regulations within its district.

Procurement and analysis of samples

5.—(1) Where a sample is to be taken under Article 29(b) or (d) of the Order of a food specified in Annex I to the Commission Regulation, that sample shall be taken in accordance with the methods of taking samples described or referred to—

Nitrate

(a) (subject to the requirement specified in column 3 of Section 1 of Annex I to the Commission Regulation(**40**)), in the Annex to Commission Directive 2002/63/EC establishing Community methods of sampling for the official control of pesticide residues in and on products of plant and animal origin and repealing Directive 79/700/EEC(**41**), where the food concerned is of a description specified in Section 1 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation;

Aflatoxins

(b) in Annex I to Directive 98/53/EC, where the food concerned is of a description specified in Section 2 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation;

Ochratoxin A

(c) in Annex I to Directive 2002/26/EC, where the food concerned is of a description specified in Section 2 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation;

Patulin

(d) in Annex I to Directive 2003/78/EC, where the food concerned is of a description specified in Section 2 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation;

Lead, cadmium, mercury and 3-MCPD

(e) in Annex I to Directive 2001/22/EC, where the food concerned is of a description specified in Section 3 or 4 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation;

Dioxins and dioxin-like PCBs

(f) in Annex I to Directive 2002/69/EC, where the food concerned is of a description specified in Section 5 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation;

(**40**) The requirement is that the minimum number of units required for a laboratory sample in such circumstances is 10
(**41**) O.J. No. L187, 16.7.2002, p. 30

Tin

(g) in Annex I to Directive 2004/16/EC, where the food concerned is of a description specified in Section 6 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation; and

Benzo(a)pyrene

(h) in Annex I to Directive 2005/10/EC, where the food concerned is of a description specified in Section 7 of Annex I to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation.

Preparation and analysis of samples for aflatoxins

(2) Where, pursuant to Article 29(b) or (d) of the Order as read with paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (b) of that paragraph, and he has submitted that sample to be analysed pursuant to Article 30(1)(a) of the Order the person who analyses the sample shall ensure that—

(a) the sample is prepared in accordance with—

(i) paragraphs 1.1, 2 and 3 of Annex II to Directive 98/53/EC, and

(ii) in the case of whole nuts, paragraph 1.2 of that Annex;

(b) any analysis of the sample is carried out in accordance with methods of analysis which meet the criteria specified in paragraph 4.3 of Annex II to Directive 98/53/EC as read with the notes to that paragraph;

(c) any analysis of the sample is carried out by a laboratory which has been designated in accordance with the requirements of Article 12.2 of Regulation 882/2004;

(d) the reporting of the results of the analysis of that sample—

(i) makes use of the definitions in paragraph 4.1 of Annex II to Directive 98/53/EC, and

(ii) is in accordance with paragraph 4.4 of that Annex.

Preparation and analysis of samples for lead, cadmium, mercury and 3-MPCD

(3) Where, pursuant to Article 29(b) or (d) of the Order as read with paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (e) of that paragraph, and he has submitted that sample to be analysed pursuant to Article 30(1)(a) of the Order the person who analyses the sample shall ensure that—

(a) the sample is prepared in accordance with paragraphs 1 and 2 of Annex II to Directive 2001/22/EC as read, in the case of paragraph 2, with the note to that paragraph;

(b) any analysis of the sample is carried out in accordance with methods of analysis which—

(i) in the case of analysis for lead (other than in wine), mercury or cadmium, meet the criteria specified in paragraph 3.3.1 (as read with paragraph 3.3.3) of Annex II to Directive 2001/22/EC,

(ii) in the case of analysis for lead in wine, comply with the second sub-paragraph of paragraph 3.2 of that Annex, and

(iii) in the case of analysis for 3-MCPD, meet the criteria specified in paragraph 3.3.2 (as read with paragraph 3.3.3) of that Annex and as read with the note to that paragraph;

(c) any analysis of the sample is carried out by a laboratory which has been designated in accordance with the requirements of Article 12.2 of Regulation 882/2004;