STATUTORY RULES OF NORTHERN IRELAND

2004 No. 487

FOOD

The Contaminants in Food Regulations (Northern Ireland) 2004

Made - - - -	*25th November 2004*
Coming into operation	*20th December 2004*

The Department of Health, Social Services and Public Safety(**1**) in exercise of the powers conferred on it by Articles 15(1)(a), (e) and (f), 16(1) and (2), 25(1)(a), (2)(e) and (3), 26(3), 32 and 47(2) of the Food Safety (Northern Ireland) Order 1991(**2**), and of all other powers enabling it in that behalf, having had regard, in accordance with Article 47(3A) of the said Order, to relevant advice given by the Food Standards Agency, and after consultation 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**), and in accordance with Article 47(3) and (3B) of the said Order, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Contaminants in Food Regulations (Northern Ireland) 2004, and shall come into operation on 20th December 2004.

Interpretation

2.—(1) In these Regulations –

"authorised lettuce" means lettuce of the kind specified in point 1.3 or in point 1.4 of Section 1 of Annex I to the Commission Regulation, which is grown in the United Kingdom in accordance with the proviso to Article 3.1 of that Regulation and is intended for human consumption there;

"authorised spinach" means spinach of the kind specified in point 1.1 of Section 1 of Annex I to the Commission Regulation, which is grown in the United Kingdom in accordance with the proviso to Article 3.1 of that Regulation and is intended for human consumption there;

(**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) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c. 28
(**3**) O.J. No. L31, 1.2.2002, p. 1

"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**), and Commission Regulation (EC) No.684/2004(**17**);

"Directive 85/591/EEC" means Council Directive 85/591/EEC concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption(**18**);

"Directive 93/99/EEC" means Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs(**19**)

"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(**20**) as amended by Commission Directive 2002/27/EC(**21**) and Commission Directive 2003/121/EC(**22**) and Commission Directive 2004/43/EC(**23**);

"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(**24**) as corrected by Commission Decision 2001/873/EC(**25**);

"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(**26**) as amended by Commission Directive 2004/43/EC;

"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

(**4**) O.J. No. L77, 16.3.2001, p. 1, as adopted by EEA Joint Committee Decision No. 81/2002 (O.J. No. L266, 3.10.2002, p. 30 EEA supplement No. 49, 3.10.2002)
(**5**) O.J. No. L313, 30.11.2001, p. 60, as adopted by EEA Joint Committee Decision No. 81/2002
(**6**) O.J. No. L321, 6.12.2001, p. 1, as adopted by EEA Joint Committee Decision No. 81/2002
(**7**) O.J. No. L37, 7.2.2002, p. 4, as adopted by EEA Joint Committee Decision No. 139/2002 (O.J. No. L19, 23.1.2003, p.3 and EEA supplement No. 5, 23.1.2003)
(**8**) O.J. No. L41, 13.2.2002, p. 12, as adopted by EEA Joint Committee Decision No. 100/2002 (O.J. No. L298, 31.10.2002, p.13 and EEA supplement No. 54, 31.10.2002, p. 11)
(**9**) O.J. No. L75, 16.3.2002, p. 18, as adopted by EEA Joint Committee Decision No. 161/2002 (O.J. No. L38, 13.2.2003, p. 16 and EEA supplement No. 9, 13.2.2003, p. 13)
(**10**) O.J. No. L80, 23.3.2002, p. 42
(**11**) O.J. No. L86, 3.4.2002, p. 5, as adopted by EEA Joint Committee Decision No. 161/2002
(**12**) O.J. No. L155, 14.6.2002, p. 63, as adopted by EEA Joint Committee Decision No. 161/2002
(**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. L106, 15.4.2004, p. 6
(**18**) O.J. No. L372, 31.12.1985, p. 50
(**19**) O.J. No. L290, 24.11.1993, p. 14
(**20**) O.J. No. L201, 17.7.1998, p. 93, as adopted by EEA Joint Committee Decision No. 93/1999 (O.J. No. L296, 23.11.2000, p. 58)
(**21**) O.J. No. L75, 16.3.2002, p. 44, as adopted by EEA Joint Committee Decision No. 161/2002
(**22**) O.J. No. L332, 19.12.2003, p. 38
(**23**) O.J. No. L113, 20.4.2004, p. 14
(**24**) O.J. No. L77, 16.3.2001, p. 14
(**25**) O.J. No. L325, 8.12.2001, p. 34
(**26**) O.J. No. L75, 16.3.2002, p. 38

dioxin-like PCBs in foodstuffs(**27**) as corrected by a corrigendum published on 20th September 2002(**28**) and as amended by Commission Directive 2004/44/EC(**29**);

"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(**30**);

"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(**31**);

"EEA State" means a member State, Norway, Iceland or Liechtenstein;

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

(2) Other expressions used in these Regulations and in the Commission Regulation have the same meaning as in the Commission Regulation.

Offences and penalties

3. Subject to regulations 6, 10 and 11, 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) before 1st January 2005 –

(i) he places on the market any food (other than authorised spinach or authorised lettuce) 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

(ii) he contravenes Article 2.3, 4.2 or 4a of the Commission Regulation;

(b) on or after 1st January 2005 –

(i) he places on the market any food (other than 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

(ii) he contravenes Article 2.3, 4.2 or 4a of the Commission Regulation; or

(c) he knowingly contravenes or fails to comply with the requirements of a notice given under Article 8(2)(a) of the Order as applied for the purposes of these Regulations by regulation 7(2).

Enforcement

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

Modification of Article 29 of the Food Safety (Northern Ireland) Order 1991 (procurement of samples) and analysis of samples

5.—(1) In its application to the taking of a sample of any food specified in Sections 1 to 6 of Annex I to the Commission Regulation, Article 29 of the Order shall be modified so as to require the power to take samples under paragraph (b) and (d) of that Article to be exercised in accordance with the methods of taking samples described or referred to –

(**27**) O.J. No. L209, 6.8.2002, p. 5
(**28**) O.J. No. L252, 20.9.2002, p. 40
(**29**) O.J. No. L113, 20.4.2004, p. 17
(**30**) O.J. No. L203, 12.8.2003, p. 40
(**31**) O.J. No. L42, 13.2.2004, p. 16

(a) (subject to the requirement specified in column 3 of Section 1 of Annex 1 to the Commission Regulation(**32**)), 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/EC(**33**), 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;

(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;

(c) 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;

(d) 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;

(e) 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;

(f) 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; and

(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.

(2) Where, pursuant to Article 29(b) or (d) of the Order as modified by 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 –

(i) so far as practicable comply with paragraphs 1 and 2 of the Annex to Directive 85/591/EEC, and

(ii) 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 complies with Directive 93/99/EEC; and

(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.

(3) Where, pursuant to Article 29(b) or (d) of the Order as modified by paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (c) of

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

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) so far as practicable comply with paragraphs 1 and 2 of the Annex to Directive 85/591/EEC,

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

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

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

(c) any analysis of the sample is carried out by a laboratory which complies with Directive 93/99/EEC;

(d) any analysis of the sample is carried out in such a way as to comply with the first and second sub-paragraphs of paragraph 3.4 of Annex II to Directive 2001/22/EC as read in the case of the second sub-paragraph with the note to that sub-paragraph; and

(e) the reporting of the results of the analysis of that sample –

(i) makes use of the definitions in paragraph 3.1 of Annex II to Directive 2001/22/EC as read with the note to that paragraph, and

(ii) is in accordance with the third sub-paragraph of paragraph 3.4 and with paragraph 3.6 of that Annex.

(4) Where, pursuant to Article 29(b) or (d) of the Order as modified by paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (d) 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 to 3 of Annex II to Directive 2002/26/EC;

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

(i) comply with paragraphs 1 and 2 of the Annex to Council Directive 85/591/EEC, and

(ii) meet the criteria specified in paragraph 4.3 of Annex II to Directive 2002/26/EC as read with the notes to that paragraph;

(c) any analysis of the sample is carried out by a laboratory which complies with Directive 93/99/EEC; and

(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 2002/26/EC, and

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

(5) Where, pursuant to Article 29(b) or (d) of the Order as modified by 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 paragraph 3 of Annex II to Directive 2002/69/EC, as read with paragraphs 1 and 2 of that Annex;