STATUTORY RULES OF NORTHERN IRELAND

2003 No. 299

FOOD

Contaminants in Food Regulations (Northern Ireland) 2003

Made - - - -	*10th June 2003*
Coming into operation	*21st July 2003*

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(2), 25(1)(a) and (3), 26(3) 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) 2003 and shall come into operation on 21st July 2003.

Interpretation

2.—(1) In these Regulations –

"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 Commission Regulation (EC) No 2375/2001(**6**), Commission Regulation (EC) No. 221/2002(**7**), Commission Regulation

(**1**) Formerly the Department of Health and Social Services; *see*S.I.1999/283 (N.I. 1), Article 3
(**2**) S.I.1991/762 (N.I. 7) as amended by S.I. 1996 /1633 (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
(**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 and 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)

(EC) No. 257/2002(**8**), Commission Regulation (EC) No. 472/2002(**9**) as corrected by a corrigendum published on 23rd March 2002(**10**) and Commission Regulation (EC) No. 563/2002(**11**) as corrected by a corrigendum published on 14th June 2002(**12**);

"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(**13**);

"Directive 93/99/EEC" means Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs(**14**);

"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(**15**) as amended by Commission Directive 2002/ 27/EC(**16**);

"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(**17**), as corrected by Commission Decision 2001/873/EC(**18**);

"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(**19**);

"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(**20**) as corrected by a corrigendum published on 20th September 2002(**21**);

"the EEA Agreement" means the Agreement on the European Economic Area(**22**) signed at Oporto on 2nd May 1992 as adjusted by the Protocol(**23**) signed at Brussels on 17th March 1993;

"EEA State" means a State which is a Contracting Party to the EEA Agreement; and

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

(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.—(1) Subject to regulations 9 and 10, 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 –

(**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. L372, 31.12.85, p. 50
(**14**) O.J. No. L290, 24.11.93, p. 14
(**15**) O.J. No. L201, 17.7.1998, p. 93
(**16**) O.J. No. L75, 16.3.2002, p. 44
(**17**) O.J. No. L77, 16.3.2001, p. 14
(**18**) O.J. No. L325, 8.12.2001, p. 34
(**19**) O.J. No. L75, 16.3.2002, p. 38
(**20**) O.J. No L209, 6.8.2002, p. 5
(**21**) O.J. No. L 252, 20.9.02, p. 40
(**22**) O.J. No. L1, 3.1.94, p. 3
(**23**) O.J. No. L1, 3.1.94, p. 37

(a) before 1st January 2005 –

(i) he places on the market any food (other than authorised spinach or 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 the Commission 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 the Commission Regulation, or

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

(c) he knowingly contravenes 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).

(2) For the purposes of this regulation –

(a) "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; and

(b) "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.

Enforcement

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

Modification of Article 29 of the Order (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 5 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 paragraphs (b) and (d) of that Article to be exercised in accordance with the methods of taking samples described or referred to –

(a) subject to the requirement specified in paragraph (2), 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(**24**), 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 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;

(**24**) O.J. No. L187, 16.7.2002, p. 30

(d) in Annex I to Directive 2001/22/EC, where the food concerned is of a description specified in Section 3 or 4 of Annex 1 to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation; and

(e) in Annex I to Directive 2002/69/EC, where the food concerned is of a description specified in Section 5 of Annex 1 to the Commission Regulation to the sampling of which that Directive applies pursuant to Article 1.3 of that Regulation.

(2) The requirement is that, in the case of lettuce of the kind specified in point 1.3 or 1.4 of Section 1 of Annex I to the Commission Regulation, the minimum number of units required for each laboratory sample shall be ten.

(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 any food of a description to which sub-paragraph (b) of that paragraph applies, 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 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.

(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 a description to which sub-paragraph (c) of that paragraph applies, 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 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 a description to which sub-paragraph (d) of that paragraph applies, 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.

(6) 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 a description to which sub-paragraph (e) of that paragraph applies, 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;

(b) any analysis of the sample is carried out –

(i) in accordance with methods of analysis which meet the criteria specified in paragraphs 5, 6 and 7 of Annex II to Directive 2002/69/EC, as read with paragraphs 1 and 2 of that Annex, and

(ii) by a laboratory which complies with the requirements of paragraph 4 of Annex II to Directive 2002/69/EC; and

(c) the reporting of the results of the analysis of that sample is in accordance with paragraph 8 of Annex II to Directive 2002/69/EC.

Defence in relation to exports

6. In any proceedings for an offence consisting of a contravention of regulation 3 it shall be a defence for the accused to prove that –

(a) the food in respect of which the offence is alleged to have been committed was intended for export to a country (other than an EEA State) which has legislation analogous to these Regulations, and that the food complies with that legislation; or

(b) that food was intended for export to an EEA State which has legislation which complies with the provisions of the Commission Regulation.