STATUTORY RULES OF NORTHERN IRELAND

2002 No. 219

FOOD

Contaminants in Food Regulations (Northern Ireland) 2002

Made - - - -	*12th June 2002*
Coming into Force - -	*29th July 2002*

The Department of Health, Social Services and Public Safety(**1**) in exercise of the powers conferred on it by Articles 15(1)(a) 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) 2002 and shall come into operation on 29th July 2002.

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 amended by Council Regulation (EC) No. 2375/2001(**5**), Commission Regulation (EC) No. 221/2002(**6**), Article 2 of Commission Regulation (EC) No. 257/2002(**7**), Commission Regulation (EC) No. 472/2002(**8**) as corrected by a corrigendum published on 23rd March 2002(**9**) and Commission Regulation (EC) No. 563/2002(**10**);

(**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.
(**5**) O.J. No. L321, 6.12.2001, p. 1.
(**6**) O.J. No. L37, 7.2.2002, p. 4.
(**7**) O.J. No. L41, 13.2.2002, p. 12.
(**8**) O.J. No. L75, 16.3.2002, p. 18.

"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(**11**);

"Directive 93/99/EEC" means Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs(**12**);

"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(**13**) as amended by Commission Directive 2002/27/EC(**14**);

"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(**15**), as corrected by Commission Decision 2001/873/EC(**16**);

"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(**17**);

"EEA Agreement" means the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as adjusted by the Protocol 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) Order 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 8 and 9, 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 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 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.

(**9**) O.J. No. L80, 23.3.2002, p. 42.
(**10**) O.J. No. L86, 3.4.2002, p. 5.
(**11**) O.J. No. L372, 31.12.85, p. 50.
(**12**) O.J. No. L290, 24.11.93, p. 14.
(**13**) O.J. No. L201, 17.7.1998, p. 93.
(**14**) O.J. No. L75, 16.3.2002, p. 44.
(**15**) O.J. No. L77, 16.3.2001, p. 14
(**16**) O.J. No. L325, 8.12.2001, p. 34
(**17**) O.J. No. L75, 16.3.2002, p. 38

(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.

Sampling, analysis and modification of Article 29 of the Order

5.—(1) In its application to the taking of a sample of any food specified in sections 1 to 4 of Annex I to the Commission Regulation, Article 29 of the Order shall be modified so as to limit the power to take samples under paragraphs (b) and (d) of that Article to the taking of samples 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 79/700/EEC establishing Community methods of sampling for the official control of pesticide residues in and on fruit and vegetables(**18**), 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 that Article;

(c) in Annex I to Directive 2002/26/EC where the food concerned is of a description specified in that section to the sampling of which that Directive applies pursuant to that Article; and

(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 I to the Commission Regulation to the sampling of which that Directive applies pursuant to that Article.

(2) The requirement referred to in sub–paragraph (a) of paragraph (1) 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, he 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;

(**18**) O.J. No. L207, 15.8.1979, p. 26

(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, he 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, he 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 thereto;

(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 thereto; 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 thereto, and

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

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—

(a) that the food in respect of which the offence is alleged to have been committed was intended for export to a country which has legislation analogous to these Regulations and that it complies with that legislation; and

(b) in the case of export to an EEA State, that the legislation complies with the Commission Regulation.

Application of various provisions of the Order

7.—(1) The following provisions of the Order shall apply for the purposes of these Regulations and any reference in them to the Order 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 purposes of Articles 7, 13 or 14;

(d) Article 30(8) (which relates to documentary evidence);

(e) Article 34 (obstruction, etc., of officers);

(f) Article 36 (punishment of offences) in so far as it relates to offences under Article 34(1) and (2) as applied by sub-paragraph (e).

(2) Subject to paragraphs (3) and (4), 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—

(a) has been sold or is offered or exposed for sale; or

(b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale,

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 (other than authorised spinach or authorised lettuce) contravenes regulation 3(1)(a)(i) or (b)(i) of the Contaminants in Food Regulations (Northern Ireland) 2002.

(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 the sampling required by Directive 98/53/EC, Directive 2001/22/EC or Directive 2002/26/EC, as appropriate, or

(b) seize the food and remove it in order to have it dealt with by a justice of the peace;

and any person who knowingly contravenes the requirements of a notice under sub-paragraph (a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(3) Where the authorised officer exercises the powers conferred by paragraph (2)(a), he shall, as soon as is reasonably practicable and in any event within 21 days, determine