

2005 No. []

FOOD, ENGLAND

The Contaminants in Food (England) Regulations 2005

<i>Made</i>	- - - - -	2005
<i>Laid before Parliament</i>		2005
<i>Coming into force</i>		January 2006

The Secretary of State, in exercise of the powers conferred on her by sections 16(1)(a), (e) and (f), 17(1) and (2), 26(1)(a), (2)(e) and (3) and 48(1) of the Food Safety Act 1990(a), and now vested in her(b), having had regard, in accordance with section 48(4A) of that Act, 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(c), makes the following Regulations:

Title, commencement and application

1. These Regulations may be cited as the Contaminants in Food (England) Regulations 2005, come into force on [] 2006 and apply in relation to England only.

Interpretation

2.—(1) In these Regulations —

“the Act” means the Food Safety Act 1990;

[“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;]

(a) 1990 c. 16.
(b) Functions formerly exercisable by “the Ministers” (being, in relation to England and Wales and acting jointly, the Minister of Agriculture, Fisheries and Food and the Secretaries of State respectively concerned with health in England and food and health in Wales and, in relation to Scotland, the Secretary of State) are now exercisable in relation to England by the Secretary of State pursuant to paragraph 8 of Schedule 5 to the Food Standards Act 1999 (1999 c. 28). Those functions, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act. Those functions, so far as exercisable in relation to Scotland, were transferred to the Scottish Ministers by section 53 of the Scotland Act 1998 (1998 c. 46) as read with section 40(2) of the 1999 Act. Section 17(1) was amended by paragraph 12(a), section 17(2) by paragraph 12(b) and section 48 by paragraph 21, of Schedule 5 to the 1999 Act.
(c) OJ 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 (OJ 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(a) as corrected by a corrigendum published on 30th November 2001(b), and as amended by Council Regulation (EC) No. 2375/2001(c), Commission Regulation (EC) No. 221/2002(d), Commission Regulation (EC) No. 257/2002(e), Commission Regulation (EC) No. 472/2002(f) as corrected by a corrigendum published on 23rd March 2002(g), Commission Regulation (EC) No. 563/2002(h) as corrected by a corrigendum published on 14th June 2002(i), Commission Regulation (EC) No. 1425/2003(j), Commission Regulation (EC) No. 2174/2003(k), Commission Regulation (EC) No. 242/2004(l), Commission Regulation (EC) No. 455/2004(m), Commission Regulation (EC) No. 655/2004(n), Commission Regulation (EC) No. 683/2004(o), Commission Regulation (EC) No. 684/2004(p), Commission Regulation (EC) No. 78/2005(q), Commission Regulation (EC) No. 123/2005(r) and Commission Regulation (EC) No. 208/2005(s);

“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(t) as amended by Commission Directive 2002/27/EC(u), Commission Directive 2003/121/EC(v) and Commission Directive 2004/43/EC(w);

“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(x) as corrected by Commission Decision 2001/873/EC(y) and as amended by Commission Directive 2005/4/EC(z);

“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(aa) as amended by Commission Directive 2004/43/EC and Commission Directive 2005/5/EC(bb);

“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(cc) as corrected by a corrigendum published on 20th September 2002(dd) and as amended by Commission Directive 2004/44/EC(a);

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- (a) OJ No. L77, 16.3.2001, p.1, as adopted by EEA Joint Committee Decision No. 81/2002 (OJ No. L266, 3.10.2002, p.30 EEA supplement No. 49, 3.10.2002).
 - (b) OJ No. L313, 30.11.2001, p.60, as adopted by EEA Joint Committee Decision No. 81/2002.
 - (c) OJ No. L321, 6.12.2001, p.1, as adopted by EEA Joint Committee Decision No. 81/2002.
 - (d) OJ No. L37, 7.2.2002, p.4, as adopted by EEA Joint Committee Decision No. 139/2002 (OJ No. L19, 23.1.2003, p.3 and EEA supplement No. 5, 23.1.2003).
 - (e) OJ No. L41, 13.2.2002, p.12, as adopted by EEA Joint Committee Decision No. 100/2002 (OJ No. L298, 31.10.2002, p.13 and EEA supplement No. 54, 31.10.2002, p.11).
 - (f) OJ No. L75, 16.3.2002, p.18, as adopted by EEA Joint Committee Decision No. 161/2002 (OJ No. L38, 13.2.2003, p.16 and EEA supplement No. 9, 13.2.2003, p.13).
 - (g) OJ No. L80, 23.3.2002, p.42.
 - (h) OJ No. L86, 3.4.2002, p.5, as adopted by EEA Joint Committee Decision No. 161/2002.
 - (i) OJ No. L155, 14.6.2002, p.63, as adopted by EEA Joint Committee Decision No. 161/2002.
 - (j) OJ No. L203, 12.8.2003, p.1.
 - (k) OJ No. L326, 13.12.2003, p.12.
 - (l) OJ No. L42, 13.2.2004, p.3
 - (m) OJ No. L74, 12.3.2004, p.11.
 - (n) OJ No. L104, 8.4.2004, p.48.
 - (o) OJ No. L106, 15.4.2004, p.3.
 - (p) OJ No. L106, 15.4.2004, p. 6.
 - (q) OJ No. L16, 20.1.2005, p.43.
 - (r) OJ No. L25, 28.1.2005, p.3.
 - (s) OJ No. L34, 8.2.2005, p.3.
 - (t) OJ No. L201, 17.7.1998, p.93, as adopted by EEA Joint Committee Decision No. 93/1999 (OJ No. L296, 23.11.2000, p.58).
 - (u) OJ No. L75, 16.3.2002, p.44, as adopted by EEA Joint Committee Decision No. 161/2002.
 - (v) OJ No. L332, 19.12.2003, p.38.
 - (w) OJ No. L113, 20.4.2004, p.14.
 - (x) OJ No. L77, 16.3.2001, p.14.
 - (y) OJ No. L325, 8.12.2001, p.34.
 - (z) OJ No. L19, 21.1.2005, p.50.
 - (aa) OJ No. L75, 16.3.2002, p.38.
 - (bb) OJ No. L27, 29.1.2005, p.38.
 - (cc) OJ No. L209, 6.8.2002, p.5.
 - (dd) OJ No. L252, 20.9.2002, p.40.

“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(b);

“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(c);

“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(d);

“EEA State” means a member State, Norway, Iceland or Liechtenstein;

“food authority” includes neither the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and the Middle Temple) nor a port health authority;

“port health authority” means —

(a) in relation to the London port health district (within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984(e) by section 7(1) of that Act), the Common Council of the City of London; and

(b) in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984, a port health authority for that district constituted by order under section 2(4) of that Act; and

“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(f).

(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 the transitional arrangements contained in the Community provisions specified in paragraph (2), a person is 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 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; or

(2) The Community provisions mention 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 Regulation (EC) No 466/2001 as regards polycyclic aromatic hydrocarbons.

(a) OJ No. L113, 20.4.2004, p.17.

(b) OJ No. L203, 12.8.2003, p.40.

(c) OJ No. L42, 13.2.2004, p.16.

(d) OJ No. L34, 8.2.2005, p.15.

(e) 1984 c. 22.

(f) OJ No. L191, 28.5.2004, p.1.

Enforcement

4.—(1) Subject to paragraph (2), it shall be the duty of each port health authority to execute and enforce these Regulations within its district.

(2) In relation to any place which is not situated in the district of a port health authority, these Regulations shall be executed and enforced by the food authority for the area in which that place is situated.

Modification of section 29 of the Food Safety Act 1990 (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 7 of Annex I to the Commission Regulation, section 29 of the Act shall be modified so as to require the power to take samples under subsection (b) and (d) of that section to be exercised in accordance with the methods of taking samples described or referred to —

- (a) (subject to the requirement specified in column 3 of Section 1 of Annex I to the Commission Regulation^(a)), 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^(b), 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;
- (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
- (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.

(2) Where, pursuant to section 29(b) or (d) of the Act 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 section 30(1)(a) of the Act 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;

^(a) The requirement is that the minimum number of units required for a laboratory sample in such circumstances is 10.
^(b) OJ No. L187, 16.7.2002, p.30.

- (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.
- (3) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (c) of that paragraph, and he has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act 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;
 - (d) any analysis of the sample is carried out in such a way as to comply with the first and third sub-paragraphs of paragraph 3.4 of Annex II to Directive 2001/22/EC as read in the case of the third 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 second and fourth sub-paragraphs of paragraph 3.4 and with paragraph 3.6 of that Annex.
- (4) Where, pursuant to section 29(b) or (d) of the Act 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 section 30(1)(a) of the Act 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 meet the criteria specified in paragraph 4.3 of Annex II to Directive 2002/26/EC;
 - (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 ; 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 section 29(b) or (d) of the Act 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 section 30(1)(a) of the Act 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.

(6) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (f) of that paragraph, and he has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act 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 2003/78/EC;
- (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 2003/78/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 ; 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 2003/78 /EC, and
 - (ii) is in accordance with paragraph 4.4 of that Annex.

(7) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (g) of that paragraph, and he has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act the person who analyses the sample shall ensure that —

- (a) the sample is prepared in accordance with paragraphs 1, 2 and 3, and that section of paragraph 4.6 headed “Sample preparation”, of Annex II to Directive 2004/16/EC;
- (b) any analysis of the sample is carried out in accordance with methods of analysis which meet the criteria specified in paragraphs 4.3 and 4.3.1 of Annex II to Directive 2004/16/EC;
- (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 and complies with that section of paragraph 4.6 of Annex II to Directive 2004/16/EC headed “Internal quality control”; 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 2004/16/EC, and
 - (ii) is in accordance with paragraph 4.4 of that Annex.

(8) Where, pursuant to section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food of the description referred to in sub-paragraph (h) of that paragraph and he has submitted that sample to be analysed pursuant to section 30(1)(a) of the Act, 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 2005/10/EC;

- (b) any analysis of the sample is carried out in accordance with methods of analysis which meet the criteria specified in paragraphs 4.3 and 4.3.1 of Annex II to Directive 2005/10/EC;
- (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 and complies with that section of paragraph 4.6 of Annex II to Directive 2005/10/EC headed “Internal quality control”; 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 2005/10/EC, and
 - (ii) is in accordance with paragraph 4.4 of that Annex.

Application of various sections of the Food Safety Act 1990

6.—(1) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof shall be construed as a reference to these Regulations —

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21 (defence of due diligence), as it applies for the purpose of section 14 or 15;
- (d) section 30(8) (which relates to documentary evidence);
- (e) section 33(1) (obstruction etc. of officers);
- (f) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above” shall be deemed to be a reference to any such requirement as is mentioned in section 33(1)(b) as applied by sub-paragraph (e);
- (g) section 35(1) (punishment of offences), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (e);
- (h) section 35(2) and (3), insofar as it relates to offences under section 33(2) as applied by sub-paragraph (f);
- (i) section 36 (offences by bodies corporate); and
- (j) section 44 (protection of officers acting in good faith).

(2) Subject to paragraph (3), section 9 of the Act (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if it read as follows —

“9.—(1) An authorised officer of a food authority or a port health authority may at all reasonable times inspect any food intended for human consumption which —

- (a) has been placed on the market; or
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of placing it on the market,

and subsections (2) to (7) below shall apply where, on such an inspection, it appears to the authorised officer that the placing on the market of any food contravenes regulation [3(a)]of the Contaminants in Food (England) Regulations 2005.

(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, Directive 2002/26/EC, Directive 2002/69/EC, Directive

2003/78/EC, Directive 2004/16/EC or Directive 2005/10/EC, as appropriate;
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 exercises the power conferred by subsection (2)(a) above, he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that the food complies with the requirements of regulation [3(a)] of the above Regulations, as appropriate 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 exercises the powers conferred by subsection (2)(b) or (3)(b) above, 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 under regulation [3(a)] of the above 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 consisting of a contravention of regulation [3(a)] of the above 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 section fails to comply with the requirements of regulation [3(a)] of the above Regulations he shall condemn the food and order —

(a) the food to be destroyed or to be so disposed of as to prevent it from being used for human consumption; and

(b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the food.

(6) If a notice under subsection (2)(a) above is withdrawn, or the justice of the peace by whom any food falls to be dealt with under this section refuses to condemn it, the food authority or, as the case may be, port health authority, shall compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(7) Any disputed question as to the right to or the amount of any compensation payable under subsection (6) above shall be determined by arbitration.

(8) Any person who knowingly contravenes the requirements of a notice under paragraph (a) of subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.”.

(3) The expressions “authorised officer”, “food authority”, “port health authority”, “human consumption”, “placing on the market”, “Directive 98/53/EC”, “Directive 2001/22/EC”, “Directive 2002/26/EC”, “Directive 2002/69/EC”, “Directive 2003/78/EC”, “Directive 2004/16/EC” and “Directive 2005/10/EC” which are used in section 9 of the Act so far as it applies for the purposes of these Regulations by virtue of paragraph (2), shall, for those purposes, bear the meanings that those expressions respectively bear in these Regulations.

Consequential amendments

7. In Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 1990(a) in so far as they apply in relation to England (provisions to which those Regulations do not apply) for the

(a) S.I. 1990/2463; relevant amending instruments are S.I. 1999/1603, S.I. 2002/890 and S.I. 2003/1478.

entry relating to the Contaminants in Food (England) Regulations 2003 there shall be substituted the following entry —

“The Contaminants in Food (England) Regulations 2005 (to the extent that a sample falls to be prepared and analysed in accordance with regulation 5 of those Regulations) S.I. 2005/ ”.

Revocations

8. The Contaminants in Food (England) Regulations 2004(a) and the Contaminants in Food (England)(Amendment) Regulations 2005(b) are revoked.

Signed by authority of the Secretary of State for Health

2005

Parliamentary Under Secretary of State
Department of Health

(a) S.I. 2004/3062.
(b) S.I. 2005/775

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only and revoke and re-enact with changes the Contaminants in Food (England) Regulations 2004 (S.I. 2004/3062) as amended —

- (a) make provision for the execution and enforcement of Commission Regulation (EC) No. 466/2001 setting maximum levels for contaminants in foodstuffs (OJ No. L77, 16.3.2001, p.1, as corrected and amended) (“the Commission Regulation”); and
- (b) implement—
 - (i) Commission Directive 98/53/EC laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminant in foodstuffs (OJ No. L201, 17.7.98, p.93, as amended),
 - (ii) 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 (OJ No. L77, 16.3.2001, p.14, as corrected and amended),
 - (iii) Commission Directive 2002/26/EC laying down the sampling methods and the methods of analysis for the official control of levels of ochratoxin A in foodstuffs (OJ No. L75, 16.3.2002, p.38, as amended),
 - (iv) 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 (OJ No. L209, 6.8.2002, p.5, as corrected and amended),
 - (v) 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 (OJ No. L203, 12.8.2003, p.40),
 - (vi) 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 (OJ No. L42, 13.2.2004, p.16), and
 - (vii) 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 (OJ No. L34, 8.2.2005, p.15).

2. These Regulations—

- (a) provide that it is an offence, (except in certain cases relating to food placed on the market before a date given in specified Community legislation) —
 - (i) to place on the market certain foods if they contain contaminants of any kind specified in the Commission Regulation at levels exceeding those specified (subject to a derogation applicable to [certain types of lettuce and] spinach),
 - (ii) to use food containing such contaminants at such levels as ingredients in the production of certain foods,
 - (iii) to mix foods which do not comply with the maximum levels referred to above with foods which do,
 - (iv) to mix foods to which the Commission Regulation relates and which are intended for direct consumption with foods to which the Commission Regulation relates and which are intended to be sorted or otherwise treated prior to consumption, or
 - (v) to detoxify by chemical treatment food not complying with the limits specified in the Commission Regulation (*regulation 3*);
- (b) specify the enforcement authorities (*regulation 4*);
- (c) prescribe requirements in relation to the analysis of samples of foods subject to the Commission Regulation, and in doing so modify section 29 of the Food Safety Act 1990 in its application to the taking of samples of the foods concerned (*regulation 5*);

- (d) provide for the application of specified provisions of the Food Safety Act 1990 for the purposes thereof (*regulation 6*);
- (e) make consequential amendments to the Food Safety (Sampling and Qualifications) Regulations 1990 in so far as they apply in relation to England (*regulation 7*).

3. A regulatory impact assessment has been prepared for these Regulations and placed in the Library of each of the Houses of Parliament, together with a transposition note setting out how the main elements of the Commission Directives referred to in paragraph 1 above are transposed into domestic law by these Regulations. Copies may be obtained from the Chemical Safety Division of the Food Standards Agency, Aviation House, 125 Kingsway, London WC2B 6NH.