

Welsh Statutory Instrument 2002 No. 1886 (W.195)

The Contaminants in Food (Wales) Regulations 2002

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STATUTORY INSTRUMENTS

2002 No. 1886 (W.195)

FOOD, WALES

The Contaminants in Food (Wales) Regulations 2002

Made

18th July 2002

Coming into force

2nd August 2002

In exercise of the powers conferred by sections 16(1)(a) and (f), 17(2), 26(1)(a) and 26(3) and 48(1) of the Food Safety Act 1990^[1], now vested in the National Assembly for Wales^[2], the National Assembly for Wales, 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^[3] and in accordance with section 48(4) and (4B) of that Act, makes the following Regulations:

Citation, commencement and application

1. These Regulations may be cited as the Contaminants in Food (Wales) Regulations 2002, shall come into force on 2nd August 2002 and shall extend to Wales only.

Interpretation

2. - (1) In these Regulations -

"the Act" ("*y Ddeddf*") means the Food Safety Act 1990;

"the Commission Regulation" ("*Rheoliad y Comisiwn*") means Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs[4] as amended by Commission Regulation (EC) No. 221/2002[5], Commission Regulation (EC) No. 257/2002[6], Commission Regulation (EC) No. 472/2002[7] as corrected by a corrigendum published on 23 March 2002[8] and Commission Regulation (EC) No. 563/2002[9] as corrected by a corrigendum published on 14 June 2002[10]

"Directive 85/591/EEC" ("*Cyfarwyddeb 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" ("*Cyfarwyddeb 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" ("*Cyfarwyddeb 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" ("*Cyfarwyddeb 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-MPCD in foodstuffs[15], as corrected by Commission Decision 2001/873/EC[16];

"Directive 2002/26/EC" ("*Cyfarwyddeb 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];

"European Economic Area Agreement" ("*Cytundeb Ardal Economaidd Europeaidd*") 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;

"European Economic Area State" ("*Talaith Ardal Economaidd Ewropeaidd*") means a State which is Contracting Party to the European Economic Area Agreement;

"food authority" ("*awdurdod bwyd*") does not include a port health authority;

"port health authority" ("*awdurdod iechyd porthladd*") means a port health authority for a port health district constituted under section 2(4) of the Public Health (Control of Disease) Act 1984[18] and, in relation to a port health authority, "authorised officer" means any person (whether or not an officer of the authority) who is authorised by the authority in writing to act in matters arising under these Regulations; and

"Regulation 2375/2001/EC" ("*Rheoliad 2375/2001/EC*") means Council Regulation (EC) No. 2375/2001 amending Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs[19].

(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 September 2002 -

(i) he or she 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 or she contravenes Article 2.3 or 4.2 of that Regulation;

(b) on or after 1st September 2002 but before 1st January 2005 -

(i) he or she 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 amended by Regulation 2375/2001/EC, as read with Articles 1.2 and 4.3 of the Commission Regulation as so amended, or

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

(c) on or after 1st January 2005 -

(i) he or she 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 amended by Regulation 2375/2001/EC, as read with Articles 1.2 and 4.3 of the Commission Regulation as so amended, or

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

(d) he knowingly contravenes or fails to comply with the requirements of a notice given under section 9(3)(a) of the Act as applied for the purposes of these Regulations by regulation 7.

(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. - (1) Subject to paragraph (2), it shall be the duty of each port health authority to execute and enforce this Order 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.

Sampling, analysis and modification of section 29 of the Act

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, section 29 of the Act shall be modified so as to limit the power to take samples under subsection (b) and (d) of that section 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^[20], 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) 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 section 29(b) or (d) of the Act as modified by paragraph (1), an authorised officer has taken a sample of food of a description to which sub-paragraph (b) of that paragraph applies, he or she 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 result 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 section 29(b) or (d) of the Act 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 or she 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 section 29(b) or (d) of the Act 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 or she 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-MPCD, 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 European Economic Area State, that the legislation complies with the Commission Regulation or, if the matter constituting the alleged offence occurred on or after 1st September 2002, with the Commission Regulation as amended by Regulation 2375/2001/EC.

Application of various sections of the Act

7. - (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 (presumption that food is 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 purposes of section 8, 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 paragraphs (3) and (4), section 9 of the Act (inspection and seizure of suspected food) shall apply for the purposes of these Regulations with the following modifications -

(a) in subsection (1) -

(i) after the words "food authority" there shall be inserted the words "or a port health authority",

(ii) the reference to subsections (3) to (9) shall be deemed to be a reference to subsections (3) to (8) as applied by this regulation, and

(iii) for the words "any food fails to comply with food safety requirements" there shall be substituted the words "the placing on the market of any food (other than authorised spinach or authorised lettuce) contravenes regulation 3(1)(a)(i), (b)(i) or (c)(i) of the Contaminants in Food (Wales) Regulations 2002";

(b) subsection (2) shall not apply for the purposes of this regulation;

(c) in subsection (3) -

(i) for the words in paragraph (a) "not to be removed except to some place specified in the notice" there shall be substituted the words "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", and

(ii) after the words "guilty of an offence" there shall be inserted the words "and liable on summary conviction to a fine not exceeding level 5 on the standard scale".

(d) in subsections (4) and (6), for the words "food safety requirements" there shall be substituted the words "the requirements of regulation 3(1)(a)(i), (b)(i) or (c)(i) of the above Regulations";

(e) in each of subsections (4) and (7), the reference to subsection (3) shall be deemed to be a reference to that subsection as applied by this regulation;

(f) in subsection (5) -

(i) the reference to subsections (3) and (4) shall be deemed to be a reference to those subsections as applied by this regulation, and

(ii) the reference to section 7 or 8 shall be deemed to be a reference to regulation 3(1)(a)(i), or (b)(i) or (c)(i) of these Regulations;

(g) in subsection (7), after the words "food authority" there shall be inserted the words "or, as the case may be, port health authority,"; and

(h) in subsection (8), the reference to subsection (7) shall be deemed to be a reference to that subsection as applied by this regulation.

(3) The expressions "authorised officer", "food authority", "port health authority", "human consumption", "placing on the market", "authorised spinach", "authorised lettuce", "Directive 98/53/EC", "Directive 2001/22/EC" and "Directive 2002/26/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 meaning that those expressions respectively bear in these Regulations.

(4) Section 2 of the Act (extended meaning of "sale" etc.) shall apply in relation to section 9 of the Act so far as it applies for the purposes of these Regulations by virtue of paragraph (2).

Transitional provisions

8. Regulation 3(1)(a)(i), (b)(i) and (c)(i) shall not apply in relation to any food lawfully placed on the market in the European Community before 5 April 2002 which is covered by, but fails to meet the requirements of, Article 1.1, 2.1 or 2.2 of the Commission Regulation, as read with Article 1.2 of that Regulation, to the extent that the failure consists in the food being placed on the market containing a contaminant specified in section 3 or 4 of Annex I to that Regulation at a level higher than that specified in the second column of the section concerned.

9. Regulation 3(1)(a)(ii), (b)(ii) and (c)(ii) shall not apply in relation to any contravention of Article 2.3 of the Commission Regulation, to the extent that the contravention consists in the use as a food ingredient, for the production of a compound foodstuff, of food lawfully placed on the market in the European Community before 5 April 2002 and containing a contaminant specified in section 3 or 4 of Annex I to that Regulation at a level higher than that specified in the second column of the section concerned.

Consequential amendment

10. In Schedule 1 to the Food Safety (Sampling and Qualifications) Regulations 1990[21] so far as they extend to Wales (provisions to which those Regulations do not apply) for each entry relating to the Contaminants in Food Regulations 1997 there shall be substituted the following entry -

"The Contaminants in Food (Wales) Regulations 2002 (to the extent that a sample falls to be prepared and analysed in accordance with regulation 5 thereof)	S.I. 2002/".
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Revocations

11. The instruments specified in column 1 of the Schedule shall, in so far as they extend to Wales, be revoked to the extent specified in column 2 of that Schedule.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998[[22](#)].

John Marek

The Deputy Presiding Officer of the National Assembly

18th July 2002

SCHEDULE**Regulation 11****REVOCATIONS**

<i>Column 1</i>		<i>Column 2</i>
<i>Instruments revoked</i>		<i>Extent of Revocation</i>
The Lead in Food Regulations 1979	(SI 1979/1254)	The whole Regulations
The Food (Revision of Penalties) Regulations 1982	(SI 1982/1727)	The reference to the Lead in Food Regulations 1979 in column 2 of Schedule 1 and the corresponding entries in columns 1, 3 and 4 of that Schedule
The Food (Revision of Penalties) Regulations 1985	(SI 1985/67)	The reference to the Lead in Food Regulations 1979 in column 2 of Part I of the Schedule and the corresponding entries in columns 1 and 3 of that Part
The Food Safety Act 1990 (Consequential Modifications) (England and Wales) Order 1990	(SI 1990/2486)	Article 19(8);The reference to the Lead in Food Regulations 1979 in column 2 of Part I of Schedule 1 and the corresponding entries in columns 1 and 3 of that Part;The reference to the Lead in Food Regulations 1979 in column 2 of Schedule 2 and the corresponding entry in column 1 of that Schedule;The reference to the Lead in Food Regulations 1979 in column 2 of Part I of Schedule 3 and the corresponding entry in column 1 of that Part;The reference to the Lead in Food Regulations 1979 in column 2 of Schedule 5 and the corresponding entries in columns 1 and 3 of that Schedule;The reference to the Lead in Food

		Regulations 1979 in column 2 of Schedule 7 and the corresponding entries in columns 1 and 3 of that Schedule
The Food Safety (Exports) Regulations 1991	(SI 1991/1476)	The reference to the Lead in Food Regulations 1979 in column 2 of Part I of Schedule 1 and the corresponding entries in columns 1 and 3 of that Part
The Flavourings in Food Regulations 1992	(SI 1992/1971)	Regulation 11 in so far as it amends the Lead in Food Regulations 1979
The Colours in Food Regulations 1995	(SI 1995/3124)	The reference to the Lead in Food Regulations 1979 in column 1 of Schedule 6 and the corresponding entries in columns 2 and 3 of that Schedule
The Food (Miscellaneous Revocations and Amendments) Regulations 1995	(SI 1995/3267)	The reference to the Lead in Food Regulations 1979 in column 1 of the Schedule and the corresponding entries in columns 2 and 3 thereof
The Contaminants in Food Regulations 1997	(SI 1997/1499)	The whole Regulations

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which extend to Wales only and revoke and re-enact with changes the Contaminants in Food Regulations 1997 (S.I. 1997/1499, as amended) -

(a) make provision for the enforcement and execution of Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs (OJ No. L77, 16.3.2001, p.1, as amended) ("the Commission Regulation"); and

(b) implement the following Commission Directives -

(i) 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-MPCD in foodstuffs (OJ No. L77, 16.3.2001, p.1, as corrected by a Commission Decision of 4th December 2001 (OJ No. L325, 8.12.2001, p.34)),

(ii) 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 (OJ No. L75, 16.3.2002, p.38), and

(iii) Commission Directive 2002/27/EC amending 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 (OJ No. L75, 16.3.2002, p.44).

2. These Regulations -

(a) subject to transitional provisions (*regulations 8 and 9*), provide that it is an offence to -

(i) 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) use foods containing such contaminants at such levels as ingredients in the production of certain foods,

(iii) mix foods which comply with the maxima referred to above with foods which do not,

(iv) 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) detoxify by chemical treatments food not complying with the limits specified in the Commission Regulation (*regulation 3*);

(b) specify the enforcement authorities (*regulation 4*);

(c) prescribe sampling and analysis requirements in relation to foods subject to the Commission Regulation, and in so doing modify section 29 of the Food Safety Act 1990 so far as it applies to the taking of samples of the foods concerned (*regulation 5*);

(d) provide a defence in relation to exports in implementation of Articles 2 and 3 of Council Directive 89/397/EEC (OJ No. L186, 30.6.89, p.23) on the official control of foodstuffs, as read with the ninth recital to that Directive (*regulation 6*);

(e) provide for the application of specified provisions of the Food Safety Act 1990 for the purposes thereof (*regulation 7*);

(f) make consequential amendments to the Food Safety (Sampling and Qualifications) Regulations 1990 (*regulation 10*); and

(g) revoke specified Instruments (including the Contaminants in Food Regulations 1997) (*regulation 11 and the Schedule*).

3. A regulatory appraisal for these Regulations has been prepared pursuant to section 65 of the Government of Wales Act 1998 and placed in the Library of the National Assembly for Wales. Copies may be obtained from the Food Standards Agency, 1st Floor, Southgate House, Cardiff, CF 10 1 EW.

Notes:

[1] 1990 (c. 16).[back](#)

[2] Functions of "the Ministers" under the Food Safety Act 1990, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).[back](#)

[3] OJ No. L31, 1.2.2002, p.1.[back](#)

[4] OJ No. L77, 16.3.2001, p.1.[back](#)

[5] OJ No. L37, 7.2.2002, p.4.[back](#)

[6] OJ No. L41, 13.2.2002, p.12.[back](#)

[7] OJ No. L75, 16.3.2002, p.18.[back](#)

[8] OJ No. L80, 23.3.2002, p.42.[back](#)

[9] OJ No. L86, 3.4.2002, p.5.[back](#)

[10] OJ No. L155, 14.06.2002, p.63.[back](#)

[11] OJ No. L372, 31.12.85, p.50.[back](#)

[12] OJ No. L290, 24.11.93, p.14.[back](#)

[13] OJ No. L201, 17.7.1998, p.93.[back](#)

[14] OJ No. L75, 16.3.2002, p.44.[back](#)

[15] OJ No. L77, 16.3.2001, p.14.[back](#)

[16] OJ No. L325, 8.12.2001, p.34.[back](#)

[17] OJ No. L75, 16.3.2002, p.38.[back](#)

[18] 1984 (c.22).[back](#)

[19] OJ No. L321, 6.12.2001, p.1.[back](#)

[20] OJ No. L207, 15.8.1979, p.26.[back](#)

[21] S.I. 1990/2463. The relevant amending instrument is S.I. 1999/1603.[back](#)

[22] 1998 c.38.[back](#)

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