



CYNULLIAD CENEDLAETHOL CYMRU

NATIONAL ASSEMBLY FOR WALES

OFFERYNNAU STATUDOL

STATUTORY INSTRUMENTS

**2007 Rhif 840 (Cy.73)**

**2007 No. 840 (W.73)**

**BWYD, CYMRU**

**FOOD, WALES**

**Rheoliadau Halogion mewn Bwyd  
(Cymru) 2007**

**The Contaminants in Food (Wales)  
Regulations 2007**

**NODYN ESBONIADOL**

**EXPLANATORY NOTE**

*(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau.)*

*(This note is not part of the Regulations)*

1. Mae'r Rheoliadau hyn, sydd yn gymwys o ran Cymru, yn dirymu Rheoliadau Halogion mewn Bwyd (Cymru) (Rhif 2) 2006 (O.S. 2006/1850) ("Rheoliadau 2006") ac yn eu haildeddfu gyda newidiadau. Maent yn darparu ar gyfer gweithredu a gorfodi Rheoliad y Comisiwn (EC) Rhif 1881/2006 sy'n gosod y lefelau uchaf ar gyfer halogion mewn deunyddiau bwydydd (OJ Rhif L364, 20.12.2006, t.5) ("Rheoliad y Comisiwn"). Mae Rheoliad y Comisiwn yn cydgrynhoi ac yn gwneud diwygiadau pellach i'r darpariaethau a geid gynt yn Rheoliad y Comisiwn (EC) Rhif 466/2001.

1. These Regulations, which apply in relation to Wales, revoke and re-enact with changes the Contaminants in Food (Wales) (No.2) Regulations 2006 (S.I. 2006/1850) ("the 2006 Regulations"). They make provision for the execution and enforcement of Commission Regulation (EC) No. 1881/2006 setting maximum levels for contaminants in foodstuffs (OJ No. L364, 20.12.2006, p.5) ("the Commission Regulation"). The Commission Regulation consolidates and makes further amendments to the provisions formerly contained in Commission Regulation (EC) No. 466/2001.

2. Mae'r Rheoliadau yn -

2. The Regulations -

- (a) darparu mai tramgwydd, (ac eithrio mewn achosion penodol sy'n ymwneud â rhoi bwyd ar y farchnad cyn dyddiad a roddir mewn deddfwriaewth Gymunedol benodol) yw-
- (i) rhoi bwydydd penodol ar y farchnad os ydynt yn cynnwys halogion o unrhyw fath a bennir yn Rheoliad y Comisiwn mewn lefelau uwch na'r rhai a bennir (yn ddarostyngedig i rhanddirymiad sy'n gymwys i fathau penodol o letus ac i ysbigoglys (sbinaets) ffres),
  - (ii) defnyddio bwyd sy'n cynnwys yr halogion hynny mewn lefelau o'r fath fel cynhwysion wrth gynhyrchu rhai bwydydd,
  - (iii) cymysgu bwydydd nad ydynt yn cydymffurfio â'r lefelau uchaf y cyfeirir atynt uchod gyda bwydydd sy'n cydymffurfio,

- (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 to fresh spinach),
  - (ii) to use food containing such contaminants at such levels as ingredients in the production of certain foods,
  - (iii) to mix foods that do not comply with the maximum levels referred to above with foods which do comply,

- (i) cymysgu bwydydd y mae Rheoliad y Comisiwn yn ymwneud â hwy ac a fwriedir i'w bwyta yn uniongyrchol neu fel cynhwysion bwyd gyda bwydydd y mae Rheoliad y Comisiwn yn ymwneud â hwy ac y bwriedir eu dosbarthu neu roi triniaeth arall iddynt cyn eu bwyta, neu
- (ii) dadwenwyno drwy driniaeth gemegol fwyd sy'n cynnwys mycotocsinau uwchlaw'r terfynau a bennir yn Rheoliad y Comisiwn (rheoliad 3);
- (b) pennu'r awdurdodau gorfodi (rheoliad 4);
- (c) darparu ar gyfer cymhwyso darpariaethau penodedig o Ddeddf Diogelwch Bwyd 1990 at ddibenion y Rheoliadau hyn (rheoliad 5);
- (ch) gwneud diwygiad canlyniadol i Reoliadau Diogelwch Bwyd (Samplu a Chymwysterau) 1990 i'r graddau y maent yn gymwys o ran Cymru (rheoliad 6), gyda'r effaith o ddatgymhwyso'r darpariaethau samplu a dadansoddi yn y Rheoliadau hynny ond yn unig i'r graddau y mae'r materion hynny yn cael eu rheoleiddio gan yr offerynnau Cymunedol a grybwyllir ym mharagraff 3(a) i (dd) isod.
- (iv) to mix foods to which the Commission Regulation relates and which are intended for direct consumption or as food ingredients 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 containing mycotoxins in excess of the limits specified in the Commission Regulation (regulation 3);
- (b) specify the enforcement authorities (regulation 4);
- (c) provide for the application of specified provisions of the Food Safety Act 1990 for the purposes of these Regulations (regulation 5);
- (d) make a consequential amendment to the Food Safety (Sampling and Qualifications) Regulations 1990 in so far as they apply in relation to Wales (regulation 6), the effect being to disapply the sampling and analysis provisions of those Regulations only to the extent that those matters are regulated by the Community instruments mentioned in paragraph 3(a) to (f) below.

3. Mae Rheoliad y Comisiwn yn pennu dulliau'r Gymuned o samplu a dadansoddi y mae'n rhaid eu defnyddio er mwyn rheoli'n swyddogol lefelau'r sylweddau a gwmpesir ganddo. Ceir y dulliau hynny dull yn -

- (a) Cyfarwyddeb y Comisiwn 2001/22/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r plwm, cadmiwm, mercwri a 3-MCPD sydd mewn deunyddiau bwydydd (OJ Rhif L77, 16.3.2001, t.14), fel y'i cywiriwyd gan Benderfyniad y Comisiwn 2001/873/EC (OJ Rhif L325, 8.12.2001, t.34), ac fel y'i diwygiwyd gan Gyfarwyddeb y Comisiwn 2005/4/EC (OJ Rhif L19, 21.1.2005, t.50);
- (b) Cyfarwyddeb y Comisiwn 2004/16/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r tun sydd mewn bwydydd tun (OJ Rhif L42, 13.2.2004, t.16);
- (c) Cyfarwyddeb y Comisiwn 2005/10/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r benzo(a)pyren sydd mewn deunyddiau bwydydd (OJ Rhif L34, 8.2.2005, t.15);
- (ch) Rheoliad y Comisiwn (EC) Rhif 401/2006 sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r mycotocsinau sydd mewn deunyddiau bwydydd (OJ Rhif L70, 9.3.2006, t.12);

3. The Commission Regulation specifies the Community methods of sampling and analysis that are required to be used for the official control of levels of the substances covered by it. Those methods are set out in -

- (a) 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 by Commission Decision 2001/873/EC (OJ No. L325, 8.12.2001, p.34), and as amended by Commission Directive 2005/4/EC (OJ No. L19, 21.1.2005, p.50);
- (b) 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);
- (c) 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), and
- (d) Commission Regulation (EC) No. 401/2006 laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs (OJ No. L70, 9.3.2006, p.12);

(d) Rheoliad y Comisiwn (EC) Rhif 1882/2006 sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r nitradau sydd mewn deunyddiau bwydydd penodol (OJ Rhif L364, 20.12.2006, t.25); a

(dd) Rheoliad y Comisiwn (EC) Rhif 1883/2006 sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau'r deuocsinau a biffeynylau polyclorinedig tebyg i ddeuocsinau sydd mewn deunyddiau bwydydd (OJ Rhif. L364, 20.12.2006, t.32).

4. Cafodd arfarniad rheoliadol llawn o'r effaith y bydd yr offeryn hwn yn ei chael ar gostau busnes ei baratoi a'i osod yn Llyfrgell Cynulliad Cenedlaethol Cymru. Gellir cael copïau gan yr Asiantaeth Safonau Bwyd, Llawr 11, Southgate House, Wood Street, Caerdydd, CF10 1EW.

(e) Commission Regulation (EC) No. 1882/2006 laying down methods of sampling and analysis for the official control of levels of nitrates in certain foodstuffs (OJ No. L364, 20.12.2006, p.25);

(f) Commission Regulation (EC) No. 1883/2006 laying down methods of sampling and analysis for the official control of levels of dioxins and dioxin-like PCBs in certain foodstuffs (OJ No. L364, 20.12.2006, p.32).

4. A full regulatory appraisal of the effect that this instrument will have on the costs of business has been prepared and placed in the Library of the National Assembly for Wales. Copies may be obtained from the Food Standards Agency, 11th Floor, Southgate House, Wood Street, Cardiff, CF10 1EW.

**2007 Rhif 840 (Cy.73)****2007 No. 840 (W.73)****BWYD, CYMRU****FOOD, WALES****Rheoliadau Halogion mewn Bwyd  
(Cymru) 2007****The Contaminants in Food (Wales)  
Regulations 2007***Wedi'u gwneud* 13 Mawrth 2007*Made* 13 March 2007*Yn dod i rym* 15 Mawrth 2007*Coming into force* 15 March 2007

Mae Cynulliad Cenedlaethol Cymru yn gwneud y Rheoliadau canlynol drwy arfer y pwerau a roddwyd gan adrannau 16(1)(a), (e) ac (f), 17(2), 26(1)(a), (2)(e) a (3), a 48 (1) o Ddeddf Diogelwch Bwyd 1990(1).

The National Assembly for Wales makes the following Regulations in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 17(2), 26(1)(a), (2)(e) and (3), and 48(1) of the Food Safety Act 1990(1).

Yn unol ag adran 48(4A) o'r Ddeddf honno, mae Cynulliad Cenedlaethol Cymru wedi rhoi sylw i gyngor perthnasol a roddwyd iddo gan yr Asiantaeth Safonau Bwyd.

In accordance with section 48(4A) of that Act, the National Assembly for Wales has had regard to relevant advice given by the Food Standards Agency.

Fel sy'n ofynnol o dan Erthygl 9 o Reoliad (EC) Rhif 178/2002 Senedd Ewrop a'r Cyngor, sy'n gosod egwyddorion cyffredinol a gofynion cyfraith bwyd, ac yn sefydlu Awdurdod Diogelwch Bwyd Ewrop ac yn pennu gweithdrefnau o ran materion diogelwch bwyd(2), cafwyd ymgynghori agored a thryloyw â'r cyhoedd yn ystod cyfnod paratoi a gwerthuso'r Rheoliadau hyn.

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(2), there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

**Enwi a chychwyn**

1. Enw'r Rheoliadau hyn yw Rheoliadau Halogion mewn Bwyd (Cymru) 2007, a deuant i rym ar 15 Mawrth 2007.

**Title and commencement**

1. The title of these Regulations is the Contaminants in Food (Wales) Regulations 2007 and they come into force on 15 March 2007.

**Dehongli**

2.-(1) Yn y Rheoliadau hyn -

ystyr "awdurdod iechyd porthladd" ("*port health authority*") mewn perthynas ag unrhyw ardal iechyd porthladd a sefydlwyd drwy orchymyn o

**Interpretation**

2.-(1) In these Regulations -

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

(1) 1990 p. 16. Trosglwyddwyd swyddogaethau a oedd gynt yn arferadwy gan "the Secretary of State", i'r graddau yr oeddent yn arferadwy o ran Cymru, i Gynulliad Cenedlaethol Cymru gan O.S 1999/672 fel y'i darllenir gydag adran 40(3) o Ddeddf Safonau Bwyd 1999 (1999 p.28).

(2) OJ Rhif L31, 1.2.2002, t.1. Diwygiwyd y Rheoliad hwnnw ddiwethaf adeg gwneud y Rheoliadau hyn gan Reoliad y Comisiwn (EC) Rhif 575/2006 (OJ Rhif L100, 8.4.2006, t.3).

(1) 1990 c. 16. Functions formerly exercised by the "Secretary of State" 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 Food Standards Act 1999 (1999 c.28).

(2) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended as at the making of these Regulations by Commission Regulation (EC) No. 575/2006 (OJ No. L100, 8.4.2006, p.3).

dan adran 2(3) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984, yw awdurdod iechyd porthladd ar gyfer yr ardal honno a sefydlwyd drwy orchymyn o dan adran 2(4) o'r Ddeddf honno;

ystyr "y Ddeddf" ("*the Act*") yw Deddf Diogelwch Bwyd 1990;

ystyr "letus awdurdodedig" ("*authorised lettuce*") yw letus o'r math a bennir ym mhwynt 1.3 o adran 1 o'r Atodiad i Reoliad y Comisiwn sy'n cydymffurfio ag amodau'r rhanddirymiad o dan Erthygl 7(2) o ran y Deyrnas Unedig;

ystyr "Rheoliad y Comisiwn" ("*the Commission Regulation*") yw Rheoliad y Comisiwn (EC) Rhif 1881/2006 sy'n gosod y lefelau uchaf ar gyfer halogion penodol mewn deunyddiau bwydydd(1);

ystyr "swyddog awdurdodedig" ("*authorised officer*") yw unrhyw berson sydd wedi'i awdurdodi yn ysgrifenedig, naill ai yn gyffredinol neu yn benodol, gan awdurdod bwyd neu, yn ôl y digwydd, awdurdod iechyd porthladd i weithredu mewn materion sy'n codi o dan y Rheoliadau hyn;

ystyr "ysbigoglys awdurdodedig" ("*authorised spinach*") yw ysbigoglys o'r math a bennir ym mhwynt 1.1 o adran 1 o'r Atodiad i Reoliad y Comisiwn sydd yn cydymffurfio ag amodau'r rhanddirymiad o dan Erthygl 7(1) o ran y Deyrnas Unedig.

(2) Mae i unrhyw ymadrodd arall a ddefnyddir yn y Rheoliadau hyn ac yn Rheoliad y Comisiwn yr un ystyr yn y Rheoliadau hyn ag sydd i'r term Saesneg cyfatebol yn Rheoliad y Comisiwn.

(3) Mae unrhyw gyfeiriad at Erthygl â rhif yn gyfeiriad at yr Erthygl sy'n dwyn y rhif hwnnw yn Rheoliad y Comisiwn.

### Tramgwyddau, cosbau ac arbedion

3.-(1) Yn ddarostyngedig i baragraffau (3) a (5) a'r trefniadau trosiannol a geir yn Erthygl 11, mae person yn euog o dramgwydd os yw'n mynd yn groes i unrhyw un o'r darpariaethau Cymunedol a bennir ym mharagraff (2) neu os yw'n methu â chydymffurfio â hi.

(2) Y darpariaethau y cyfeirir atynt ym mharagraff (1) yw -

- (a) Erthygl 1(1), (gwaharddiad rhag rhoi deunyddiau bwydydd sy'n cynnwys halogion uwchlaw'r terfynau'r rhagnodedig ar y farchnad), fel y'i darllenir gydag Erthygl 4 yn achos cnau daear, cnau, ffrwythau sych ac indrawn;

"authorised lettuce" ("*letus awdurdodedig*") means lettuce of the kind specified in point 1.3 of section 1 of the Annex to the Commission Regulation which complies with the conditions of the derogation under Article 7(2) in relation to the United Kingdom;

"authorised officer" ("*swyddog awdurdodedig*") means any person who is authorised in writing, either generally or specifically, by a food authority or as the case may be a port health authority to act in matters arising under these Regulations;

"authorised spinach" ("*ysbigoglys awdurdodedig*") means spinach of the kind specified in point 1.1 of section 1 of the Annex to the Commission Regulation which complies with the conditions of the derogation under Article 7(1) in relation to the United Kingdom;

"the Commission Regulation" ("*Rheoliad y Comisiwn*") means Commission Regulation (EC) No.1881/2006 setting maximum levels for certain contaminants in foodstuffs(1);

"port health authority" ("*awdurdod iechyd porthladd*") means 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.

(2) Any other expression used in these Regulations and in the Commission Regulation has the same meaning in these Regulations as it bears in the Commission Regulation.

(3) Any reference to a numbered Article is a reference to the Article so numbered in the Commission Regulation.

### Offences, penalties and savings

3.-(1) Subject to paragraphs (3) and (5) and to the transitional arrangements contained in Article 11, a person is guilty of an offence if he or she contravenes or fails to comply with any of the Community provisions specified in paragraph (2).

(2) The provisions mentioned in paragraph (1) are -

- (a) Article 1(1), (prohibition on the placing on the market of foodstuffs containing contaminants in excess of prescribed limits), as read with Article 4 in the case of groundnuts, nuts, dried fruit and maize;

(1) OJ Rhif L364, 20.12.2006, t.5.

(1) OJ No. L364, 20.12.2006, p.5.

(b) Erthygl 3 (gwaharddiadau rhag defnyddio, cymysgu a dadwenwyo).

(3) Nid yw paragraff (1) yn gymwys i roi letus awdurdodedig nac ysbigoglys awdurdodedig ar y farchnad.

(4) Mae unrhyw berson a gollfernir o dramgwydd o dan baragraff (1) yn agored ar gollfarn ddiannod i ddirwy nad yw'n uwch na lefel 5 ar y raddfa safonol.

(5) Er gwaethaf dirymu Rheoliadau Halogion Bwyd (Diwygio) (Cymru) (Rhif 2) 2006(1), mae'r trefniadau trosiannol y cyfeirir atynt yn rheoliad 3(1) o'r Rheoliadau hynny yn gymwys i dramgwydd o dan y Rheoliadau hyn fel petaent yn gymwys o dan y Rheoliadau hynny.

### **Gorfodi ac awdurdodau cymwys**

4.-(1) Dyletswydd pob awdurdod bwyd o fewn ei ranbarth a phob awdurdod porthladd o fewn ei ardal yw gweithredu a gorfodi'r Rheoliadau hyn a Rheoliad y Comisiwn.

(2) Yr awdurdod cymwys at ddibenion Erthygl 2(2) (cyfiawnhad gweithredwyr busnesau bwyd dros ffactorau crynodi neu wanedu) yw'r awdurdod sydd â'r ddyletswydd i orfodi o dan baragraff (1).

### **Cymhwyso gwahanol adrannau o Ddeddf Diogelwch Bwyd 1990**

5.-(1) Bydd darpariaethau canlynol y Ddeddf yn gymwys at ddibenion y Rheoliadau hyn gyda'r addasiad y mae unrhyw gyfeiriad yn y darpariaethau hynny at y Ddeddf neu at Ran ohoni i'w ddehongli fel cyfeiriad at y Rheoliadau hyn -

- (a) adran 3 (rhagdybiaethau bod bwyd wedi'i fwriadu i'w fwyta gan bobl);
- (b) adran 20 (tramgwyddau sy'n codi oherwydd bai person arall);
- (c) adran 21 (amddiffyniad diwydrwydd dyladwy), fel y mae'n gymwys at ddibenion adran 14 neu 15;
- (ch) adran 30(8) (sy'n ymwneud â thystiolaeth ddogfennol);
- (d) adran 33(1) (rhwystro etc. swyddogion);
- (dd) adran 33(2), gyda'r addasiad bod y cyfeiriad at "any such requirement as is mentioned in subsection (1)(b) above" yn cael ei ddehongli fel cyfeiriad at unrhyw ofyniad o'r fath a grybwyllir yn adran 33(1)(b) fel y'i cymhwysir gan is-baragraff (d);
- (e) adran 35(1) (cosbi tramgwyddau), i'r graddau y mae'n ymwneud â thramgwyddau o dan adran 33(1) fel y'i cymhwysir gan is-baragraff (e);

(b) Article 3 (prohibitions on use, mixing and detoxification).

(3) Paragraph (1) does not apply to the placing on the market of authorised lettuce or authorised spinach.

(4) Anyone convicted of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) Notwithstanding the revocation of the Contaminants in Food (Wales) (No.2) Regulations 2006(1), the transitional arrangements referred to in regulation 3(1) of those Regulations apply to an offence under these Regulations in like manner as they applied to an offence under those Regulations.

### **Enforcement and competent authorities**

4.-(1) It is be the duty of each food authority within its area and each port health authority within its district to execute and enforce these Regulations and the Commission Regulation.

(2) The competent authority for the purposes of Article 2(2) (justification by food business operators of concentration or dilution factors) is the authority having the duty to enforce under paragraph (1).

### **Application of various sections of the Food Safety Act 1990**

5.-(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof is to 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" is to 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);

- (f) adran 35(2) a (3), i'r graddau y mae'n berthnasol i dramgwyddau o dan adran 33(2) fel y'i cymhwysir gan is-baragraff (dd);
- (ff) adran 36 (tramgwyddau gan gyrff corfforaethol);
- (g) adran 36A (tramgwyddau gan bartneriaethau Albanaidd); ac
- (ng) adran 44 (amddiffyn swyddogion sy'n gweithredu'n ddidwyll).

(2) Yn ddarostyngedig i baragraff (3), mae adran 9 o'r Ddeddf (arolygu bwyd amheus a'i gymryd i feddiant) yn gymwys at ddibenion y Rheoliadau hyn fel pe bai'n darllen fel a ganlyn -

"9.-(1) An authorised officer of a food authority may at all reasonable times inspect any food intended for human consumption which has been placed 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 fails to comply with the requirements specified in regulation 3(2)(a) of the Contaminants in Food (Wales) Regulations 2007 as read with regulation 3(3) and (5) of those Regulations and with Article 11 of the Commission Regulation, ("the Community requirements").

(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 sampling in the manner required by Article 8 of the Commission Regulation; 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 or she must, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he or she is satisfied that the food complies with the Community requirements and -

- (a) if he or she is so satisfied, must forthwith withdraw the notice;
- (b) if he or she is not so satisfied, must 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 or she is to inform the person in charge of the food of his or her intention to have it dealt with by a justice of the peace and -

- (a) any person who in connection with

- (h) section 35(2) and (3), in so far as it relates to offences under section 33(2) as applied by sub-paragraph (f);
- (i) section 36 (offences by bodies corporate);
- (j) section 36A (offences by Scottish partnerships); and
- (k) 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) applies for the purposes of these Regulations as if it read as follows -

"9.-(1) An authorised officer of a food authority may at all reasonable times inspect any food intended for human consumption which has been placed 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 fails to comply with the requirements specified in regulation 3(2)(a) of the Contaminants in Food (Wales) Regulations 2007 as read with regulation 3(3) and (5) of those Regulations and with Article 11 of the Commission Regulation, ("the Community requirements").

(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 sampling in the manner required by Article 8 of the Commission Regulation; 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 or she must, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he or she is satisfied that the food complies with the Community requirements and -

- (a) if he or she is so satisfied, must forthwith withdraw the notice;
- (b) if he or she is not so satisfied, must 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 or she must inform the person in charge of the food of his or her intention to have it dealt with by a justice of the peace and -

- (a) any person who in connection with

regulation 3(2)(a) of the above Regulations might be liable to a prosecution in respect of the food must, if he or she 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(2)(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 or she considers appropriate in the circumstances, that any food falling to be dealt with by him under this section fails to comply with the Community requirements he must 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 will 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 is to be determined by arbitration.

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

(3) Mae i'r ymadroddion "authorised officer" ("swyddog awdurdodedig") "food authority" ("awdurdod bwyd"), "placing on the market" ("rhoi ar y farchnad"), a "the Commission Regulation" ("Rheoliad y Comisiwn") a ddefnyddir yn adran 9 o'r Ddeddf i'r graddau y mae'n gymwys at ddibenion y Rheoliadau hyn yn rhinwedd paragraff (2), at y dibenion hynny, yr ystyron sydd i'r ymadroddion Saesneg hynny a'r ymadroddion Cymraeg cyfatebol yn eu trefn yn y Rheoliadau hyn.

regulation 3(2)(a) of the above Regulations might be liable to a prosecution in respect of the food must, if he or she 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 in connection with regulation 3(2)(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 or she considers appropriate in the circumstances, that any food falling to be dealt with by him under this section fails to comply with the Community requirements he must 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 must 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 must be determined by arbitration.

(8) Any person who knowingly contravenes the requirements of a notice under subsection (2)(a) above is 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" ("swyddog awdurdodedig"), "food authority" ("awdurdod bwyd"), "placing on the market" ("rhoi ar y farchnad"), "the Commission Regulation" ("Rheoliad y Comisiwn") 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), for those purposes, have the meanings that those expressions respectively have in these Regulations.



## Diwygiad canlyniadol

6. Yn Atodlen 1 (darpariaethau nad yw'r Rheoliadau hyn yn gymwys iddynt) i Reoliadau Diogelwch Bwyd (Samplu a Chymwysterau) 1990(1) i'r graddau y maent yn gymwys o ran Cymru, yn lle'r cofnod sy'n ymwneud â Rheoliadau Halogion mewn Bwyd (Cymru) (Rhif 2) 2006 rhodder y cofnod a ganlyn -

"The Contaminants in Food (Wales) Regulations 2007 (to the extent that a sample falls to be prepared and analysed in accordance with the Commission Regulation as that expression is defined in those Regulations) O.S. 2007/ ."

## Dirymu

7. Mae Rheoliadau Halogion mewn Bwyd (Cymru) (Rhif 2) 2006 wedi'u dirymu.

Llofnodwyd ar ran Cynulliad Cenedlaethol Cymru o dan adran 66(1) o Ddeddf Llywodraeth Cymru 1998(2).

13 Mawrth 2007

Llywydd Cynulliad Cenedlaethol Cymru

## Consequential amendment

6. In Schedule 1 (provisions to which those Regulations do not apply) to the Food Safety (Sampling and Qualifications) Regulations 1990(1) in so far as they apply in relation to Wales, for the entry relating to the Contaminants in Food (Wales) (No.2) Regulations 2006 there is substituted the following entry -

"The Contaminants in Food (Wales) Regulations 2007 (to the extent that a sample falls to be prepared and analysed in accordance with the Commission Regulation as that expression is defined in those Regulations) S.I. 2007/ ."

## Revocations

7. The Contaminants in Food (Wales) (No.2) Regulations 2006 are revoked.

Signed on behalf of the National Assembly for Wales under section 66 (1) of the Government of Wales Act 1998(2).

13 March 2007

*D. Elis-Thomas*

The Presiding Officer of the National Assembly for  
Wales

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(1) O.S. 1990/2463; yr offeryn diwygio perthnasol yw O.S. 1999/1603  
(2) 1998 p. 28

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(1) S.I. 1990/2463; relevant amending instrument is S.I. 1999/1603  
(2) 1998 c. 28

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