



OFFERYNNAU STATUDOL
CYMRU

WELSH STATUTORY
INSTRUMENTS

2010 Rhif 2394 (Cy.206)

2010 No. 2394 (W.206)

BWYD, CYMRU

FOOD, WALES

**Rheoliadau Halogion mewn Bwyd
(Cymru) 2010**

**The Contaminants in Food (Wales)
Regulations 2010**

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, sy'n gymwys o ran Cymru, yn dirymu ac yn ailddeddfu gyda newidiadau Reoliadau Halogion mewn Bwyd (Cymru) 2009 (O.S. 2009/1386 (Cy.142), (fel y'i diwygiwyd)). Maent yn gwneud darpariaeth ar gyfer parhau i weithredu a gorfodi Rheoliad y Comisiwn (EC) Rhif 1881/2006 sy'n pennu'r lefelau uchaf ar gyfer halogion mewn deunyddiau bwyd (OJ Rhif L364, 20.12.2006, t.5) ("Rheoliad y Comisiwn").

1. These Regulations, which apply in relation to Wales, revoke and re-enact with changes the Contaminants in Food (Wales) Regulations 2009 (S.I. 2009/1386 (W.142) (as amended)). They make provision for the continuing 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").

2. Mae Rheoliad y Comisiwn, a gydgrnhodd y darpariaethau a oedd wedi eu cynnwys yn flaenorol yn Rheoliad y Comisiwn (EC) Rhif 466/2001 ac a wnaeth ddiwygiadau pellach iddynt, wedi ei ddiwygio'n ddiweddar gan Reoliad y Comisiwn (EU) Rhif 165/2010, sy'n ymwneud â lefelau uchaf ar gyfer aflatocsinau ac â thrin bwydydd penodol y cafwyd eu bod yn cynnwys lefelau uwch o aflatocsinau na'r lefelau hynny (OJ Rhif L150, 27.2.2010, t.8). Mae Rheoliad y Comisiwn wedi ei ddiwygio'n flaenorol gan—

2. The Commission Regulation, which consolidated and made further amendments to the provisions formerly contained in Commission Regulation (EC) No. 466/2001, has recently been amended by Commission Regulation (EU) No. 165/2010, which concerns maximum levels for aflatoxins and the treatment of certain foods found to contain aflatoxins in excess of those levels (OJ No. L50, 27.2.2010, p.8). The Commission Regulation has previously been amended by—

- (a) Rheoliad y Comisiwn (EC) Rhif 1126/2007 (OJ Rhif L255, 29.9.2007, t.14), sy'n ymwneud â lefelau uchaf a ganiateir ar gyfer tocsinau *Fusarium* mewn indrawn a chynnyrch indrawn;
- (b) Rheoliad y Comisiwn (EC) Rhif 565/2008 (OJ Rhif L160, 19.6.2008, t.20), sy'n ymwneud â lefelau uchaf a ganiateir ar gyfer deuocsinau a biffenylau polychlorinedig (PCBs) mewn afu pysgod;
- (c) Rheoliad y Comisiwn (EC) Rhif 629/2008 (OJ Rhif L173, 3.7.2008, t.6), sy'n ymwneud â lefelau uchaf a ganiateir ar gyfer metelau trwm penodol; a

- (a) Commission Regulation (EC) No. 1126/2007 (OJ No. L255, 29.9.2007, p.14), concerning maximum permitted levels for *Fusarium* toxins in maize and maize products;
- (b) Commission Regulation (EC) No. 565/2008 (OJ No. L160, 19.6.2008, p.20), concerning maximum permitted levels for dioxins and PCBs in fish liver;
- (c) Commission Regulation (EC) No. 629/2008 (OJ No. L173, 3.7.2008, p.6), concerning maximum permitted levels for certain heavy metals; and

(ch) Rheoliad y Comisiwn (EU) Rhif 105/2010 (OJ Rhif L35, 6.2.2010, t.7), sy'n ymwneud â lefelau uchaf a ganiateir ar gyfer ochratoxin A.

3. Mae'r Rheoliadau hyn yn darparu hefyd ar gyfer gweithredu a gorfodi Rheoliad y Comisiwn (EC) Rhif 124/2009 (OJ Rhif L40, 11.2.2009, t.7) ("Rheoliad 124/2009"), sy'n ymwneud â lefelau uchaf a ganiateir ar gyfer ychwanegion penodol at fwyd anifeiliaid y gellir eu cael o dan amgylchiadau penodedig mewn bwyd.

4. Mae'r Rheoliadau hyn–

- (a) yn darparu bod y canlynol yn dramgwydd, (ac eithrio mewn achosion penodol sy'n ymwneud â bwyd a roddwyd ar y farchnad cyn dyddiad a roddwyd mewn deddfwriaeth EU benodedig)–
 - (i) rhoi ar y farchnad fwydydd penodol os ydynt yn cynnwys halogion o unrhyw fath a bennir yn Rheoliad y Comisiwn neu yn Rheoliad 124/2009 ar lefelau sy'n uwch na'r rhai a bennir,
 - (ii) defnyddio bwyd sy'n cynnwys halogion ar lefelau sy'n uwch na'r rhai a ganiateir gan Rheoliad y Comisiwn yn gynwysyddion wrth gynhyrchu bwydydd penodol,
 - (iii) cymysgu bwydydd nad ydynt yn cydymffurfio â'r lefelau uchaf a ragnodir gan Rheoliad y Comisiwn neu Rheoliad 124/2009 â bwydydd sy'n cydymffurfio,
 - (iv) cymysgu bwydydd y mae Rheoliad y Comisiwn yn ymwneud â hwy ac sydd wedi eu bwriadu i'w bwyta'n uniongyrchol neu fel cynwysyddion bwyd gyda bwydydd y mae Rheoliad y Comisiwn yn ymwneud â hwy ac sydd wedi eu bwriadu i'w didoli neu i'w trin fel arall cyn cael eu bwyta, neu
 - (v) dadwenwyno drwy ei drin yn gemegol fwyd sy'n cynnwys lefelau mycotocsinau y tu hwnt i'r terfynau a bennir yn Rheoliad y Comisiwn (rheoliad 3);
- (b) yn pennu'r awdurdodau gorfodi (rheoliad 4);
- (c) yn darparu ar gyfer cymhwyso darpariaethau penodedig Deddf Diogelwch Bwyd 1990 at ddibenion y Rheoliadau hyn (rheoliad 5);
- (ch) yn gwneud diwygiad canlyniadol i Reoliadau Diogelwch Bwyd (Samplu a Chymwysterau) 1990 i'r graddau y maent yn gymwys o ran Cymru (rheoliad 6), ac effaith y diwygiad hwnnw yw datgymhwyso'r darpariaethau yn y Rheoliadau hynny ynghylch samplu a dadansoddi ddim ond i'r graddau y mae'r materion hynny'n cael eu rheoleiddio gan yr offerynnau UE a grybwyllir ym mharagraff 5(a) i (ch) isod.

(d) Commission Regulation (EU) No. 105/2010 (OJ No. L35, 6.2.2010, p.7), concerning maximum permitted levels for ochratoxin A.

3. These Regulations also provide for the execution and enforcement of Commission Regulation (EC) No. 124/2009 (OJ No. L40, 11.2.2009, p.7) ("Regulation 124/2009"), which concerns maximum permitted levels for certain feed additives that may in specified circumstances occur in food.

4. The 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 EU legislation)–
 - (i) to place on the market certain foods if they contain contaminants of any kind specified in the Commission Regulation or in Regulation 124/2009 at levels exceeding those specified,
 - (ii) to use food containing contaminants at levels in excess of those permitted by the Commission Regulation as ingredients in the production of certain foods,
 - (iii) to mix foods that do not comply with the maximum levels prescribed by the Commission Regulation or Regulation 124/2009 with foods which do comply,
 - (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 EU instruments mentioned in paragraph 5(a) to (d) below.

5. Mae Rheoliad y Comisiwn yn pennu dulliau'r Undeb Ewropeaidd o samplu a dadansoddi y mae'n ofynnol eu defnyddio i reoli'n swyddogol lefelau'r sylweddau y mae'n eu cwmpasu. Mae'r dulliau hynny wedi eu nodi yn y canlynol—

- (a) Rheoliad y Comisiwn (EC) Rhif 401/2006 sy'n pennu'r dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol y lefelau mycotocsinau mewn deunyddiau bwyd (OJ Rhif L70, 9.3.2006, t.12), fel y'i diwygiwyd gan Reoliad y Comisiwn (EU) Rhif 178/2010 (OJ Rhif L52, 3.3.2010, t.32);
- (b) Rheoliad y Comisiwn (EC) Rhif 1882/2006 sy'n pennu dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau nitradau mewn deunyddiau bwyd penodol (OJ Rhif L364, 20.12.2006, t.25);
- (c) Rheoliad y Comisiwn (EC) Rhif 1883/2006 sy'n pennu dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol lefelau deuocsinau a biffenylau polychlorinedig (PCBs) tebyg i ddeuocsinau sydd mewn deunyddiau bwyd penodol (OJ Rhif L364, 20.12.2006, t.32);
- (ch) Rheoliad y Comisiwn (EC) Rhif 333/2007 sy'n pennu'r dulliau samplu a dadansoddi ar gyfer rheoli'n swyddogol y lefelau plwm, cadmiwm, mercwri, tun inorganig, 3-MCPD a benzo(a)pyren mewn deunyddiau bwyd (OJ Rhif L88, 29.3.2007, t.29).

6. Mae asesiad rheoleiddiol o effaith cydymffurfio â'r Rheoliadau hyn o ran costau a manteision tebygol wedi ei baratoi ac mae ar gael gan yr Asiantaeth Safonau Bwyd, Llawr 11, Southgate House, Wood Street, Caerdydd, CF10 1EW.

5. The Commission Regulation specifies the European Union 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 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), as amended by Commission Regulation (EU) No. 178/2010 (OJ No. L52, 3.3.2010, p.32);
- (b) 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);
- (c) 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);
- (d) Commission Regulation (EC) No. 333/2007 laying down the methods of sampling and analysis for the official control of the levels of lead, cadmium, mercury, inorganic tin, 3-MCPD and benzo(a)pyrene in foodstuffs (OJ No. L88, 29.3.2007, p.29).

6. A regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations and is available from the Food Standards Agency, 11th Floor, Southgate House, Wood Street, Cardiff, CF10 1EW.

2010 Rhif 2394 (Cy.206)

BWYD, CYMRU

**Rheoliadau Halogion mewn Bwyd
(Cymru) 2010**

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| <i>Gwnaed</i> | <i>28 Medi 2010</i> |
| <i>Gosodwyd gerbron Cynulliad Cenedlaethol Cymru</i> | <i>30 Medi 2010</i> |
| <i>Yn dod i rym</i> | <i>22 Hydref 2010</i> |

Mae Gweinidogion Cymru yn gwneud y Rheoliadau a ganlyn drwy arfer y pwerau a roddwyd gan adrannau 16(1)(a), (e) ac (f), 17(2), 26(1)(a) a (3), a 48(1) o Ddeddf Diogelwch Bwyd 1990(1), ac a freiniwyd bellach ynddynt hwy(2), fel y'u darllenir ynghyd â pharagraff 1A o Atodlen 2 i Ddeddf y Cymunedau Ewropeaidd 1972(3).

Mae'r Rheoliadau hyn yn gwneud darpariaeth at ddiben a grybwyllir yn adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972 ac mae'n ymddangos i Weinidogion Cymru ei bod yn hwylus i gyfeiriadau at yr Atodiad i'r offeryn UE fel y pennir yn rheoliad 2(4) gael eu dehongli fel cyfeiriadau at yr Atodiad hwnnw fel y'i diwygir o bryd i'w gilydd.

Yn unol ag adran 48(4A) o Ddeddf Diogelwch Bwyd 1990, mae Gweinidogion Cymru wedi rhoi sylw i gyngor perthnasol a roddwyd gan yr Asiantaeth Safonau Bwyd.

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- (1) 1990 p.16. Amnewidiwyd adran 1(1) a (2) (y diffiniad o "food") gan O.S. 2004/2990. Diwygiwyd adrannau 17 a 48 gan baragraffau 12 a 21 yn eu trefn o Atodlen 5 i Ddeddf Safonau Bwyd 1999 (1999 p.28), "Deddf 1999". Diwygiwyd adran 48 hefyd gan O.S. 2004/2990. Diwygiwyd adran 26(3) gan Atodlen 6 i Ddeddf 1999. Diwygiwyd adran 53(2) gan baragraff 19 o Atodlen 16 i Ddeddf Dadreoleiddio a Chontractio Allan 1994 (1994 p.40), Atodlen 6 i Ddeddf 1999, O.S. 2004/2990 ac O.S. 2004/3279.
- (2) Trosglwyddwyd swyddogaethau, i'r graddau yr oeddent yn arferadwy mewn perthynas â Chymru, i Gynulliad Cenedlaethol Cymru gan Orchymyn Cynulliad Cenedlaethol Cymru (Trosglwyddo Swyddogaethau) 1999 (O.S.1999/672) fel y'i darllenir ynghyd ag adran 40(3) o Ddeddf 1999 ac fe'u trosglwyddwyd wedyn i Weinidogion Cymru gan baragraff 30 o Atodlen 11 i Ddeddf Llywodraeth Cymru 2006 (2006 p.32).
- (3) 1972 p.68. Mewnosodwyd paragraff 1A o Atodlen 2 gan adran 28 o Ddeddf Diwygio Deddfwriaethol a Rheoleiddiol 2006 (2006 p.51) ac fe'i diwygiwyd gan Ran 1 o Atodlen 1 i Ddeddf yr Undeb Ewropeaidd (Diwygio) 2008 (2008 p.7).

2010 No. 2394 (W.206)

FOOD, WALES

**The Contaminants in Food (Wales)
Regulations 2010**

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| <i>Made</i> | <i>28 September 2010</i> |
| <i>Laid before the National Assembly for Wales</i> | <i>30 September 2010</i> |
| <i>Coming into force</i> | <i>22 October 2010</i> |

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(a), (e) and (f), 17(2), 26(1)(a) and (3), and 48(1) of the Food Safety Act 1990(1), and now vested in them(2), as read with paragraph 1A of Schedule 2 to the European Communities Act 1972(3).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for references to the Annex to the EU instrument as specified in regulation 2(4) to be construed as references to that Annex as it may be amended from time to time.

In accordance with section 48(4A) of the Food Safety Act 1990, the Welsh Ministers have had regard to relevant advice given by the Food Standards Agency.

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- (1) 1990 c.16. Section 1(1) and (2) (definition of "food") was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c.28), "the 1999 Act". Section 48 was also amended by S.I. 2004/2990. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c.40), Schedule 6 to the 1999 Act, S.I. 2004/2990 and S.I. 2004/3279.
- (2) Functions 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) as read with section 40(3) of the 1999 Act and thereafter transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32).
- (3) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51) and amended by Part 1 of Schedule 1 to the European Union (Amendment) Act 2008 (2008 c.7).

Fel sy'n ofynnol gan Erthygl 9 o Reoliad (EC) Rhif 178/2002 Senedd Ewrop a'r Cyngor, sy'n pennu egwyddorion cyffredinol a gofynion cyfraith bwyd, yn sefydlu Awdurdod Diogelwch Bwyd Ewrop ac sy'n pennu gweithdrefnau ynghylch materion diogelwch bwyd(1), cafwyd ymgynghoriad cyhoeddus agored a thryloyw yn ystod cyfnod paratoi a gwerthuso'r Rheoliadau hyn.

Enwi, cymhwyso a chychwyn

1. Enw'r Rheoliadau hyn yw Rheoliadau Halogion mewn Bwyd (Cymru) 2010, maent yn gymwys o ran Cymru a deuant i rym ar 22 Hydref 2010.

Dehongli

2.--(1) Yn y Rheoliadau hyn--

nid yw "awdurdod bwyd" ("*food authority*") yn cynnwys awdurdod iechyd porthladd;

ystyr "awdurdod iechyd porthladd" ("*port health authority*"), o ran unrhyw ddsbarth iechyd porthladd a sefydlwyd drwy orchymyn o dan adran 2(3) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(2), yw awdurdod iechyd porthladd ar gyfer y dosbarth hwnnw a sefydlwyd drwy orchymyn o dan adran 2(4) o'r Ddeddf honno;

mae i 'bwyd anifeiliaid ar gyfer anifeiliaid nad ydynt yn darged' yr ystyr a roddir i ("*non-target feed*") gan Reoliad y Comisiwn 124/2009;

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

ystyr "Rheoliad y Comisiwn" ("*the Commission Regulation*") yw Rheoliad y Comisiwn (EC) Rhif 1881/2006 sy'n pennu lefelau uchaf ar gyfer halogion penodol mewn deunyddiau bwyd(3);

ystyr "Rheoliad y Comisiwn 629/2008" ("*Commission Regulation 629/2008*") yw Rheoliad y Comisiwn (EC) Rhif 629/2008 sy'n diwygio Rheoliad (EC) Rhif 1881/2006 sy'n pennu lefelau uchaf ar gyfer halogion penodol mewn deunyddiau bwyd(4);

(1) OJ Rhif L31, 1.2.2002, t.1. Diwygiwyd y Rheoliad hwnnw ddiwethaf gan Reoliad (EC) Rhif 596/2009 Senedd Ewrop a'r Cyngor sy'n addasu nifer o offerynnau'n ddarostyngedig i'r weithdrefn y cyfeirir ati yn Erthygl 251 o'r cytuniad i Benderfyniad y Cyngor 1999/468/EC o ran y weithdrefn reoleiddiol gyda chraffu: Addasu'r weithdrefn reoleiddiol gyda chraffu - Rhan Pedwar (OJ Rhif L188, 18.7.2009, t.14).

(2) 1984 p.22.

(3) OJ Rhif L364, 20.12.2006, t.5. Mae'r Rheoliad hwn wedi ei ddiwygio gan Reoliadau'r Comisiwn (EC) Rhifau 1126/2007 (OJ Rhif L255, 29.9.2007, t.14), 565/2008 (OJ Rhif L160, 19.6.2008, t.20), 629/2008 (OJ Rhif L173, 3.7.2008, t.6), 105/2010 (OJ Rhif L35, 6.2.2010, t.7) a 165/2010 (OJ Rhif L50, 27.2.2010, t.8).

(4) OJ Rhif L173, 3.7.2008, t.6.

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

Title, application and commencement

1. The title of these Regulations is the Contaminants in Food (Wales) Regulations 2010, they apply in relation to Wales and come into force on 22 October 2010.

Interpretation

2.--(1) In these Regulations--

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

"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;

"the Commission Regulation" ("*Rheoliad y Comisiwn*") means Commission Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs(2);

"Commission Regulation 629/2008" ("*Rheoliad y Comisiwn 629/2008*") means Commission Regulation (EC) No. 629/2008 amending Regulation (EC) No 1881/2006 setting maximum levels for certain contaminants in foodstuffs(3);

"Commission Regulation 124/2009" ("*Rheoliad y Comisiwn 124/2009*") means Commission Regulation (EC) No. 124/2009 setting maximum levels for the presence of coccidiostats or histomonostats in food resulting from the unavoidable carry-over of these substances in non-target feed(4);

(1) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny - Part Four (OJ No. L188, 18.7.2009, p.14).

(2) OJ No. L364, 20.12.2006, p.5. This Regulation has been amended by Commission Regulations (EC) No's 1126/2007 (OJ No. L255, 29.9.2007, p.14), 565/2008 (OJ No. L160, 19.6.2008, p.20), 629/2008 (OJ No. L173, 3.7.2008, p.6), 105/2010 (OJ No. L35, 6.2.2010, p.7) and 165/2010 (OJ No. L50, 27.2.2010, p.8)

(3) OJ No. L173, 3.7.2008, p.6.

(4) OJ No. L40, 11.2.2009, p.7.

ystyr "Rheoliad y Comisiwn 124/2009" ("*Commission Regulation 124/2009*") yw Rheoliad y Comisiwn (EC) Rhif 124/2009 sy'n pennu lefelau uchaf ar gyfer presenoldeb cocsidiostatau neu histomonostatau mewn bwyd o ganlyniad i drosglwyddiad anochel y sylweddau hyn mewn bwyd anifeiliaid ar gyfer anifeiliaid nad ydynt yn darged(1);

ystyr "Rheoliad y Comisiwn" 165/2010" ("*Commission Regulation 165/2010*") yw Rheoliad y Comisiwn (EU) Rhif 165/2010 sy'n diwygio Rheoliad (EC) Rhif 1881/2006 sy'n pennu lefelau uchaf ar gyfer halogion penodol mewn deunyddiau bwyd o ran aflatocsinau (2);

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

(2) Mae i unrhyw ymadrodd arall a ddefnyddir yn y Rheoliadau hyn ac y mae'r ymadrodd Saesneg sy'n cyfateb iddo'n cael ei ddefnyddio yn Rheoliad y Comisiwn neu yn Rheoliad y Comisiwn 124/2009 yr un ystyr yn y Rheoliadau hyn ag sydd i'r ymadrodd Saesneg cyfatebol yn y Rheoliadau hynny.

(3) Oni nodir fel arall, mae unrhyw gyfeiriad at Erthygl â rhif yn gyfeiriad at yr Erthygl sy'n dwyn y rhif hwnnw yn Rheoliad y Comisiwn.

(4) Mae unrhyw gyfeiriad at "yr Atodiad" yn gyfeiriad at yr Atodiad i Reoliad y Comisiwn fel y diwygir yr Atodiad hwnnw o bryd i'w gilydd, ac mae unrhyw gyfeiriad at Reoliad y Comisiwn i'w ddehongli'n unol â hynny.

Tramgwyddau a chosbau

3.–(1) Yn ddarostyngedig i'r trefniadau trosiannol a gynhwysir–

- (a) yn Erthygl 11;
- (b) yn Erthygl 2 o Reoliad y Comisiwn 629/2008; neu
- (c) yn Erthygl 2 o Reoliad y Comisiwn 165/2010,

mae person sy'n mynd yn groes i unrhyw un o'r darpariaethau UE a bennir ym mharagraff (2), neu sy'n methu â chydymffurfio ag unrhyw un ohonynt, yn euog o dramgwydd.

(2) Y darpariaethau UE a grybwyllwyd ym mharagraff (1) yw–

- (a) Erthygl 1(1), (gwahardd rhag rhoi ar y farchnad ddeunyddiau bwyd sy'n cynnwys halogion y tu hwnt i derfynau rhagnodedig sydd wedi eu cynnwys yn yr Atodiad), fel y'i

"Commission Regulation 165/2010" ("*Rheoliad y Comisiwn 165/2010*") means Commission Regulation (EU) No. 165/2010 amending Regulation (EC) No. 1881/2006 setting maximum levels for certain contaminants in foodstuffs as regards aflatoxins(1);

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

"non-target feed" ("*bwyd anifeiliaid ar gyfer anifeiliaid nad ydynt yn darged*") has the meaning given to it by Commission Regulation 124/2009;

"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(2), 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 or in Commission Regulation 124/2009 has the same meaning in these Regulations as it bears in those Regulations.

(3) Unless indicated otherwise, any reference to a numbered Article is a reference to the Article so numbered in the Commission Regulation.

(4) Any reference to "the Annex" is a reference to the Annex to the Commission Regulation as that Annex may be amended from time to time, and any reference to the Commission Regulation is to be construed accordingly.

Offences and penalties

3.–(1) Subject to the transitional arrangements contained in–

- (a) Article 11;
- (b) Article 2 of Commission Regulation 629/2008; or
- (c) Article 2 of Commission Regulation 165/2010,

a person who contravenes or fails to comply with any of the EU provisions specified in paragraph (2) is guilty of an offence.

(2) The EU 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 contained in the Annex), as read with the Annex and, in the

(1) OJ Rhif L40, 11.2.2009, t.7.

(2) OJ Rhif L50, 27.2.2010, t.8.

(1) OJ No. L50, 27.2.2010, p.8.

(2) 1984 c.22.

darllenir gyda'r Atodiad ac, yn achos cnau daear, hadau olew eraill, cnau coed, ffrwythau sych, reis ac indrawn, gydag Erthygl 4;

- (b) Erthygl 3 (gwahardd rhag defnyddio, cymysgu a dadwenwyno);
- (c) Erthygl 1(1) o Reoliad y Comisiwn 124/2009 (gwaharddiadau ar farchnata neu gymysgu bwydydd sy'n cynnwys cocsidiostatau neu histomonostatau ar lefelau y tu hwnt i derfynau rhagnodedig).

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

Gorfodi ac awdurdodau cymwys

4.–(1) Mae'n ddyletswydd ar bob awdurdod bwyd o fewn ei ardal a phob awdurdod iechyd porthladd o fewn ei ddsbarth i weithredu a gorfodi'r Rheoliadau hyn, Rheoliad y Comisiwn a Rheoliad y Comisiwn 124/2009.

- (2) Yr awdurdod cymwys at ddibenion–
 - (a) Erthygl 2(2) (cyfiawnhau gan weithredwyr busnes bwyd ffactorau crynodi neu wanedu), a
 - (b) Erthygl 1(1) o Reoliad y Comisiwn 124/2009 (sy'n ymwneud â'r ddyletswydd i ymchwilio i'r rhesymau dros yr halogiad),

yw'r awdurdod y mae dyletswydd arno i orfodi o dan baragraff (1).

Cymhwyso amryw adrannau o Ddeddf Diogelwch Bwyd 1990

5.–(1) Mae darpariaethau canlynol y Ddeddf yn gymwys at ddibenion y Rheoliadau hyn gyda'r addasiad bod 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 ei fwriadu ar gyfer ei fwyta gan bobl);
- (b) adran 20 (tramgwyddau oherwydd bai person arall);
- (c) adran 21 (amddiffyniad diwydrwydd dyladwy)(1), gyda'r addasiad bod–
 - (i) is-adrannau (2) i (4) i fod yn gymwys mewn perthynas â thrangwydd o dan reoliad 3 fel y maent yn gymwys mewn perthynas â thrangwydd o dan adran 14 neu 15, a
 - (ii) yn is-adran (4) bernir bod y cyfeiriadau at "sale" yn cynnwys cyfeiriadau at "placing on the market";
- (ch) adran 30(8) (sy'n ymwneud â thystiolaeth ddogfennol);

case of groundnuts, other oilseeds, tree nuts, dried fruit, rice and maize, with Article 4;

- (b) Article 3 (prohibitions on use, mixing and detoxification);
- (c) Article 1(1) of Commission Regulation 124/2009 (prohibitions on marketing or mixing foods containing coccidiostats or histomonostats at levels in excess of prescribed limits).

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

Enforcement and competent authorities

4.–(1) It is the duty of each food authority within its area and each port health authority within its district to execute and enforce these Regulations, the Commission Regulation and Commission Regulation 124/2009.

- (2) The competent authority for the purposes of–
 - (a) Article 2(2) (justification by food business operators of concentration or dilution factors), and
 - (b) Article 1(1) of Commission Regulation 124/2009 (relating to the duty to investigate the reasons for the contamination),

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)(1) with the modification that–
 - (i) subsections (2) to (4) are to apply in relation to an offence under regulation 3 as they apply in relation to an offence under section 14 or 15, and
 - (ii) in subsection (4) the references to "sale" are deemed to include references to "placing on the market";
- (d) section 30(8) (which relates to documentary evidence);

(1) Diwygiwyd adran 21 gan O.S. 2004/3279.

(1) Section 21 was amended by S.I. 2004/3279.

- (d) adran 33(1) (rhwystru etc. swyddogion);
- (dd) adran 33(2), gyda'r addasiad bod y cyfeiriad at "any such requirement as is mentioned in subsection (1)(b) above" i'w ystyried yn gyfeiriad 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)(1) (cosbi tramgwyddau) i'r graddau y mae'n ymwneud â thramgwyddau o dan adran 33(1) fel y'i cymhwysir gan is-baragraff (d);
- (f) adran 35(2) a (3)(2), i'r graddau y mae'n ymwneud â thramgwyddau 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)(3); ac
- (ng) adran 44 (amddiffyn swyddogion sy'n gweithredu'n ddiwyll).

(2) Yn ddarostyngedig i baragraff (3), mae adran 9 o'r Ddeddf (arolygu bwyd dan amheuaeth ac ymafael ynddo) 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 are to 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) and (c) of the Contaminants in Food (Wales) Regulations 2010, ("the EU 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 law; 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, that officer must, as soon as is reasonably practicable and in any event within 21 days, determine

- (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)(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)(2), 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)(3); 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 reads 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 are to 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) and (c) of the Contaminants in Food (Wales) Regulations 2010, ("the EU 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 law; 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, that officer must, as soon as is reasonably practicable and in any event within 21 days, determine

(1) Diwygir adran 35(1) gan Ddeddf Cyfiawnder Troseddol 2003 (2003 p.44), Atodlen 26, paragraff 42, o ddyddiad i'w benodi ymlaen.

(2) Diwygiwyd adran 35(3) gan O.S. 2004/3279.

(3) Mewnosodwyd adran 36A gan Ddeddf Safonau Bwyd 1999 (1999 p.28), Atodlen 5, paragraff 16.

(1) Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c.44), Schedule 26, paragraph 42, from a date to be appointed.

(2) Section 35(3) was amended by S.I. 2004/3279.

(3) Section 36A was inserted by the Food Standards Act 1999 (1999 c.28), Schedule 5, paragraph 16.

whether or not the food complies with the EU requirements and—

- (a) if satisfied that it does comply, must forthwith withdraw the notice;
- (b) if 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, that officer 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) or (c) 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) or (c) 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 the justice considers appropriate in the circumstances, that any food falling to be dealt with under this section fails to comply with the EU requirements the justice 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 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'r ymadroddion Cymraeg "swyddog awdurdodedig" ac "awdurdod bwyd" sy'n cyfateb i'r ymadroddion Saesneg "authorised officer" a "food

whether or not the food complies with the EU requirements and—

- (a) if satisfied that it does comply, must forthwith withdraw the notice;
- (b) if 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, that officer 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) or (c) 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) or (c) 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 the justice considers appropriate in the circumstances, that any food falling to be dealt with under this section fails to comply with the EU requirements the justice 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 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) The expressions "authorised officer" ("*swyddog awdurdodedig*") and "food authority" ("*awdurdod bwyd*") which are used in section 9 of the Act so far as

authority" sy'n cael eu defnyddio yn adran 9 o'r Ddeddf i'r graddau y mae'n gymwys at ddibenion y Rheoliadau hyn yn rhinwedd paragraff (2), i ddwyn, at y dibenion hynny, yr ystyron sy'n cael eu dwyn gan yr ymadroddion hynny yn ôl eu trefn yn y Rheoliadau hyn.

Diwygiad canlyniadol

6. Yn Atodlen 1 (darpariaethau nad yw'r Rheoliadau hynny'n 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) 2009(2), rhoddir y cofnod a ganlyn—

"The Contaminants in Food (Wales) Regulations 2010 (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. 2010/2394 (Cy.206)."

Dirymu

7. Dirymir Rheoliadau Halogion mewn Bwyd (Cymru) 2009.

it applies for the purposes of these Regulations by virtue of paragraph (2), are to, for those purposes, bear the meanings that those expressions respectively bear in these Regulations.

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) Regulations 2009(2) there is substituted the following entry—

"The Contaminants in Food (Wales) Regulations 2010 (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. 2010/2394 (Cy.206)."

Revocations

7. The Contaminants in Food (Wales) Regulations 2009 are revoked.

Gwenda Thomas

Y Dirprwy Weinidog dros Iechyd a Gwasanaethau Cymdeithasol, o dan awdurdod y Gweinidog dros Iechyd a Gwasanaethau Cymdeithasol, un o Weinidogion Cymru

28 Medi 2010

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Deputy Minister for Health and Social Services, under authority of the Minister for Health and Social Services, one of the Welsh Ministers

28 September 2010

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(1) O.S. 1990/2463; yr offerynnau diwygio perthnasol yw O.S. 1999/1603, O.S. 2005/364 (Cy.31), O.S. 2006/485 (Cy.55), O.S. 2006/1850 (Cy.193), O.S. 2007/840 (Cy.73) ac O.S. 2009/1386 (Cy.142).
(2) O.S. 2009/1386 (Cy.142), fel y'i diwygiwyd gan O.S. 2009/2939 (Cy.256).

(1) S.I. 1990/2463; relevant amending instruments are S.I. 1999/1603, S.I. 2005/364 (W.31), S.I. 2006/485 (W.55), S.I. 2006/1850 (W.193), S.I. 2007/840 (W.73) and S.I. 2009/1386 (W.142).
(2) S.I. 2009/1386 (W.142), as amended by S.I. 2009/2939 (W. 256).

OFFERYNNAU STATUDOL
CYMRU

2010 Rhif 2394 (Cy.206)

BWYD, CYMRU

Rheoliadau Halogion mewn Bwyd
(Cymru) 2010

WELSH STATUTORY
INSTRUMENTS

2010 No. 2394 (W.206)

FOOD, WALES

The Contaminants in Food (Wales)
Regulations 2010