FOOD STANDARDS AGENCY
SCOTLAND
Buidheann Inbhe-Bìdhe an Alba

EXECUTIVE NOTE

The Contaminants in Food (Scotland) Regulations 2006 SSI/2006/306

Description

1. The above instrument was made under the powers in section 6(4), 16(1)(a), (e) and (f), 17(2), 26(1)(a) (2)(e) and (3), 31(1) and (2)(b), (c) and (f) and 48(1) of the Food Safety Act 1990, and of all other powers enabling them in that behalf, 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. The instrument is subject to negative resolution procedure.

Policy Objective

2. These Regulations make provision for the execution and enforcement of European Community (EC) measures contained in Commission Regulations (EC) 466/2001. This Regulation sets maximum levels for certain contaminants in foodstuffs and implement and prescribes that the methods to be used for sampling and analysis for enforcement purposes are as laid down in specified supporting Commission Directives and a Commission Regulation. The Regulation will revoke and replace The Contaminants in Food Scotland) Regulations 2005 (SSI 2005 No 606).

Legislative Background

3. The Contaminants in Food (Scotland) Regulations 2006 will provide enforcement authorities with the necessary powers to ensure that food business operators comply with the provisions and statutory limits laid down in Commission Regulation (EC) 466/2001 of 8 March 2001, as amended. The EC measures have applied since April 2002 and are currently enforced in Scotland under the Contaminants in Food (Scotland) Regulations 2005. However, recent amendments to the Commission Regulation have necessitated the development of a new SI.

Policy Background

4. EC legislation on contaminants is made under the framework Regulation for food contaminants, Council Regulation (EEC) No 315/93 of 8 February 1993. The Regulation lays down Community procedures for contaminants in food and applies to those contaminants that are not covered by other specific Community legislation. Article 2 to the Regulation provides that food containing a contaminant in an amount that is unacceptable from the public health viewpoint, and in particular at a toxicological level, shall not be placed on the market. Paragraph 3 to the Article requires that maximum levels must be set for specific contaminants and that these levels must be adopted in the form of a non-exhaustive Community list. In view of disparities between the laws of Member States in regard to the maximum levels for contaminants in certain foodstuffs and the consequent risk of distortion of competition, Community measures relating to specific contaminants (Commission

Regulation (EC) No 466/2001 of 8 March 2001) were introduced under Council Regulation 315/93/EC.

5. The intention of Commission Regulation 466/2001 is to provide consumers with an increased measure of protection by setting maximum levels for mycotoxins and undesirable process and environmental contaminants in those foodstuffs that are significant contributors to the total dietary exposure of consumers to those contaminants. The Regulation, which has undergone a number of amendments, aims to keep contaminants at levels that are toxicologically acceptable and to exclude grossly contaminated food from entering the food chain. It also harmonises Member States' existing measures, thus facilitating trade.

6. Maximum levels for lead, cadmium, mercury, dioxins, polycyclic aromatic hydrocarbons (PAHs) and nitrate (environmental chemical contaminants), 3-MCPD (a process contaminant), aflatoxins, ochratoxin A and patulin (mycotoxins) and inorganic tin have already been set under this legislation.

7. In view of the requirement to protect public health by keeping contaminants at levels that are toxicologically acceptable, the European Commission, in co-operation with Member States, investigates whether limits should be set for additional contaminants. It also reviews the maximum limits of those contaminants currently in the legislation and the foods that are subject to control. As a result, the following Commission measures, which amend Commission Regulation 466/2001, have been adopted and provision must now be made for their execution and enforcement:

   (i) Commission Regulation (EC) No 856/2005 of 6 June 2005, setting maximum levels for *Fusarium* toxins in certain foodstuffs. The maximum levels will apply from 1 July 2006.

   (ii) Commission Regulation (EC) No 199/2006 of 3 February 2006, setting maximum levels for the sum of dioxins and dioxin-like PCBs in a range of foodstuffs. The maximum levels will apply from 4 November 2006.

8. Commission Regulation 466/2001 is supported by a number of allied Commission Directives that lay down the methods for sampling and analysis for the official control of those contaminants specified in the legislation. The Regulation sets maximum levels for a variety of mycotoxins and the methods for sampling and analysis for these contaminants is currently carried out under a number of different Directives. Following discussion at Commission level, it was agreed to bring the procedures for all mycotoxins together under a single Commission Regulation in order to make them easier to apply. The following Commission measure was adopted:

   (i) Commission Regulation (EC) No 401/2006 of 23 February 2006, laying down the sampling methods and the methods of analysis for the official control of the levels of aflatoxins, ochratoxin A, patulin and *Fusarium* toxins in foodstuffs. The new Regulation, which will repeal the existing mycotoxin Commission Directives (98/53/EC as amended; 2002/26/EC as amended; 2003/78/EC and 2005/38/EC), will apply from 1 July 2006.

Consultation

9. In order to meet the deadline of 1 July 2006 for the application of Commission Regulation 4001/2006, a shortened consultation of 6 weeks was carried out on the Contaminants in Food (Scotland) Regulations 2006. However, interested parties were informed of progress during the development of the Commission Regulations and given opportunities to comment throughout the negotiations.

10. The formal consultation in Scotland of nearly 350 interested parties including consumer groups, industry, enforcement authorities and other government departments, in 6 weeks from 12 April 2006, produced three responses. There were no comments relating specifically to The Contaminants in Food (Scotland) Regulations 2006.

11. Regular informal consultations on the potential impact of the Commission's proposals for mycotoxins and dioxin-like PCBs were carried out throughout the negotiations. On each occasion interested parties including consumer groups, industry and enforcement authorities were contacted via information letters both to provide information on progress and to seek comments and data to help inform the UK's negotiating position. Concerns raised and the outcomes are discussed in detail in the accompanying RIAs which can be obtained from Food Standards Agency Scotland.

Other Administrations

12. Similar Regulations will apply in England, Wales and Northern Ireland.

Impact

13. A Regulatory Impact Assessment has been prepared and is available at the address below.

14. The impact on the public sector is believed to be minimal. Some costs to the Exchequer may arise from the costs to local authorities in carrying out the sampling and analysis requirements provided for in the Commission Regulation (see RIA). However, such testing would be risk based and the overall risk in the UK is low.

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