SCOTTISH STATUTORY INSTRUMENTS

2012 No. 3

AGRICULTURE
FOOD

The Specified Products from China (Restriction on First Placing on the Market) (Scotland) Amendment Regulations 2012

Made - - - -	*10th January 2012*
Laid before the Scottish Parliament - - - -	*12th January 2012*
Coming into force - -	*12th January 2012*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and all other powers enabling them to do so.

Citation and commencement

1. These Regulations may be cited as the Specified Products from China (Restriction on First Placing on the Market) (Scotland) Amendment Regulations 2012 and come into force on 12th January 2012.

Amendment of the Specified Products from China (Restriction on First Placing on the Market) (Scotland) Regulations 2008

2.—(1) The Specified Products from China (Restriction on First Placing on the Market) (Scotland) Regulations 2008(**2**) are amended in accordance with paragraphs (2) to (8).

(2) In regulation 2(1) (interpretation)—

(a) for the definition of "the Commission Decision" substitute the definition—

(**1**) 1972 c.68. Section 2(2) was amended by paragraph 15(3) of Schedule 8 to the Scotland Act 1998 (c.46), section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and Part 1 of the Schedule to the European Union (Amendment) Act 2008 (c.7). The functions conferred on the Minister of the Crown under section 2(2), in so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. In so far as not transferred, and in so far as relating to food (including drink) including the primary production of food, relevant functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I. 2005/849), and in so far as relating to feed, relevant functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006 (S.I. 2006/304).

(**2**) S.S.I. 2008/148.

""the Commission Decision" means Commission Implementing Decision 2011/884/EU on emergency measures regarding unauthorised genetically modified rice in rice products originating from China and repealing Decision 2008/289/EC(**3**);";

(b) after the definition of "local authority"—

(i) omit "and"; and

(ii) insert the definition—

""placing on the market" has the meaning given to it in Article 3.8 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(**4**); and"; and

(c) in the definition of "rice product", for "the Annex" substitute "Annex I".

(3) For the heading to, and paragraph (1) of, regulation 3 (restriction on first placing on the market of rice products), substitute—

"**Restriction on placing on the market of rice products**

3.—(1) The placing on the market of any rice product is prohibited unless—

(a) the conditions specified in Article 4 of the Commission Decision have been complied with in relation to that product; and

(b) where the consignment of the rice product has been split following official control, an authenticated copy of the health certificate and the analytical report accompanies each part of the split consignment.".

(4) Omit regulation 4 (notification of positive results).

(5) In regulation 5 (enforcement), after paragraph (4), insert—

"(5) Each local authority within its area shall ensure that the requirements in the following provisions are adhered to:—

(a) Article 5 of the Commission Decision (which is concerned with the conditions under which rice products may be placed on the market, the official controls to be carried out and the measures to be taken with regard to non-compliant consignments); and

(b) the first sentence of Article 7 of that Decision (which is concerned with the control of splitting of consignments).".

(6) In regulation 6 (recovery of costs)—

(a) for "Article 5" substitute "Article 8"; and

(b) where it appears, after "food business operator", insert "or feed business operator".

(7) In regulation 7(1)(b) (application of various provisions of the Food Safety Act 1990), for "first placing on the market" substitute "placing on the market".

(8) As regulation 8, insert—

(**3**) OJ L 343, 23.12.2011, p.140.

(**4**) OJ L 31, 1.2.2002, p.1, last amended by Commission 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 L 188, 18.7.2009, p.14).

"**Transitional provision**

8. The prohibition in regulation 3(1) does not apply in relation to any rice product which left China before 1st February 2012 provided that—

(a) the sampling and analysis has been conducted in accordance with Article 4(3) of the Commission Decision; and

(b) the placing on the market of the product would not have constituted an offence under these Regulations as they stood immediately before the coming into force of the Specified Products from China (Restriction on First Placing on the Market) (Scotland) Amendment Regulations 2012.".

St Andrew's House,
Edinburgh
10th January 2012

RICHARD LOCHHEAD
A member of the Scottish Executive

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 12th January 2012, amend the Specified Products from China (Restriction on First Placing on the Market) (Scotland) Regulations 2008 ("the 2008 Regulations") in order to implement Commission Implementing Decision 2011/884/EU on emergency measures regarding unauthorised genetically modified rice in rice products originating from China and repealing Decision 2008/289/EC (OJ L 343, 23.12.2011, p.140) ("the Commission Decision").

The Commission Decision provides for import restrictions that previously applied to Bt 63 genetically modified rice to apply, with modifications, to all unauthorised genetically modified rice.

In particular, these Regulations amend the 2008 Regulations by—

(a) in regulation 2, substituting a new definition of the Commission Decision and making provision in respect of certain other definitions (regulation 2(2));

(b) amending regulation 3(1), which concerns the conditions under which rice products originating from China may be placed on the market (regulation 2(3));

(c) omitting regulation 4, which required operators to notify the Food Standards Agency of certain test results (regulation 2(4));

(d) inserting a new paragraph into regulation 5, which identifies provisions of the Commission Decision that a local authority must ensure are observed (regulation 2(5));

(e) amending regulation 6 to give effect to the requirement in Article 8 of the Commission Decision that all costs resulting from the official controls and from any non-compliance must be borne by the food or feed business operator concerned (regulation 2(6)); and

(f) as regulation 8, adding a provision implementing the transitional arrangements contained in Article 9 of the Commission Decision (regulation 2(8)).

A business and regulatory impact assessment is being prepared for this instrument and will be published once complete. Due to the emergency nature of this instrument, the Food Standards Agency was unable to complete the impact assessment before the coming into force of the instrument.