

**2003 No. 382**

**FOOD**

**The Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (Scotland) Regulations 2003**

<i>Made</i>	<i>6th August 2003</i>
<i>Laid before the Scottish Parliament</i>	<i>8th August 2003</i>
<i>Coming into force</i>	<i>9th August 2003</i>

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and all other powers enabling them in that behalf hereby make the following Regulations:

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (Scotland) Regulations 2003 and shall come into force on 9th August 2003.

(2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations—

(a) “the Act” means the Food Safety Act 1990(b) and, save where the context otherwise requires and subject to paragraph (b), any expression used both in these Regulations and in the Act has the meaning it bears in the Act;

“the Commission Decision” means Commission Decision 2003/460/EC on emergency measures regarding hot chilli and hot chilli products(c) as corrected by a corrigendum published on 25th July 2003(d);

“free circulation” has the same meaning as in Article 23.2 of the Treaty establishing the European Community; and

(b) any other expression used in these Regulations has the same meaning as in the Commission Decision.

**Prohibition on import**

3.—(1) Subject to paragraph (2), no person shall import into Scotland any hot chilli or hot chilli products unless—

(a) the conditions specified in Articles 2.1, 2.3, 3.1 and 4 of the Commission Decision are satisfied in relation to those products; and

(b) the costs resulting from their analysis and storage specified in Article 6 of the Commission Decision have been met.

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(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3). The functions conferred on a Minister of the Crown under section 2(2) of the 1972 Act, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 1990 c.16.

(c) O.J. No. L 154, 21.6.03, p.114.

(d) O.J. No. L 186, 25.7.03, p.47.

- (2) Paragraph (1) shall not be taken to prohibit the bringing into Scotland—
- (i) from a member State of any hot chilli or hot chilli products which are in free circulation in that member State; or
  - (ii) from England, Wales or Northern Ireland of hot chilli or hot chilli products which have been imported into the United Kingdom in accordance with the Commission Decision.

(3) Any person who knowingly contravenes paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months.

#### **Prohibition on placing on the market**

4.—(1) No person shall place on the market any hot chilli or hot chilli product which contains Sudan red 1 (CAS Nr 842-07-9).

(2) Any person who knowingly contravenes paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months.

#### **Enforcement**

5.—(1) It shall be the duty of each food authority to execute and enforce these Regulations within its area.

(2) For the purposes of the exercise of the duty referred to in paragraph (1), an authorised officer of the food authority shall—

- (a) ensure that the requirements referred to in paragraph (3) are adhered to; and
- (b) have the same powers of entry as an authorised officer of an enforcement authority under section 32 of the Act for purposes connected with the Act or Regulations or Orders made under the Act.

(3) The requirements are those specified in—

- (a) Article 2.1 and 2.2 of the Commission Decision (which is concerned with documentary checks relating to consignments of hot chilli or hot chilli products);
- (b) Article 3 of the Commission Decision (which is concerned with the sampling and analysis of such consignments and of hot chilli or hot chilli products already placed on the market), other than the requirement to supply the Commission with specified information; and
- (c) Article 4 of the Commission Decision (which is concerned with the case where consignments are split).

(5) Each food authority shall give such assistance and information to the Food Standards Agency as it may reasonably request in connection with the execution and enforcement of these Regulations.

#### **Application of various provisions of the Food Safety Act 1990 and sampling and analysis**

6.—(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 20 (offences due to fault of another person);
- (b) section 33 (obstruction etc. of officers);
- (c) section 35(1) to (3) (punishment of offences), in so far as it relates to offences under section 33(1) and (2) as applied by sub-paragraph (b);
- (d) section 36 (offences by bodies corporate);
- (e) section 36A (offences by Scottish partnerships); and
- (f) section 44 (protection of officers acting in good faith).

(2) Section 29 of the Act (procurement of samples) shall apply for the purposes of these Regulations with the modifications that—

- (a) for “an enforcement authority” there shall be substituted “a food authority”;

- (b) for subsection (b)(ii) there shall be substituted the following:–
  - “(ii) is found by the authorised officer at any premises which that officer is authorised to enter by virtue of regulation 4(2)(b) of the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (Scotland) Regulations 2003;”;
- (c) subsection (c) shall be omitted; and
- (d) for “any of the provisions of this Act or of regulations or orders made under it” in subsection (d) there shall be substituted “the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (Scotland) Regulations 2003”.

(3) Section 30 (analysis etc. of samples) shall apply for the purposes of these Regulations with the modification that in subsection (1) after “section 29 above” there shall be inserted “as applied for the purposes of the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (Scotland) Regulations 2003 by regulation 5(2) thereof”.

(4) Where a sample procured under section 29 of the Act as applied for the purposes of these Regulations by paragraph (2) has been analysed in accordance with the provisions of section 30 of the Act as applied by paragraph (3), the owner shall be entitled on request to be supplied with a copy of the certificate of analysis by the food authority.

### **Destruction of illegal hot chilli or hot chilli products**

7.—(1) If on an inspection or examination of any hot chilli or hot chilli products it appears to an authorised officer of a food authority that they have been imported in contravention of regulation 3(1) or do not comply with regulation 4(1) the authorised officer shall after appropriate consultation with a person appearing to be the importer or food business operator serve on that person a notice ordering the destruction of the hot chilli or hot chilli products within such reasonable period as shall be specified in the notice.

- (2) Any notice served under paragraph (1) shall state–
  - (a) the right of appeal to the sheriff under paragraph (4); and
  - (b) the period within which such an appeal may be brought.

(3) The person appearing to be the importer or food business operator of hot chilli or hot chilli products in respect of which a notice has been served under paragraph (1) shall ensure that they are stored until destruction under the supervision of the authorised officer at such place and under such conditions as the authorised officer may in the notice direct.

(4) Any person who is aggrieved by a decision of an authorised officer to serve a notice under paragraph (1) may appeal to the sheriff who may confirm or cancel the notice.

(5) The period within which such an appeal as is mentioned in paragraph (4) may be brought shall be 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and public holidays.

(6) Pending determination of an appeal under paragraph (4), paragraph (3) shall apply to the storage of the hot chilli or hot chilli products concerned.

(7) If the sheriff allows an appeal brought under paragraph (4) the food authority shall compensate the owner of the hot chilli or hot chilli products concerned for any depreciation in their value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under paragraph (6) shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(9) Any person who breaches the terms of a notice served under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months.

(10) The cost of destruction of hot chilli or hot chilli products under this regulation shall be borne by the importer or food business operator.

St Andrew's House,  
Edinburgh  
6th August 2003

*MALCOLM CHISHOLM*  
A member of the Scottish Executive

## **EXPLANATORY NOTE**

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

These Regulations implement Commission Decision 2003/460/EC on emergency measures regarding hot chilli and hot chilli products (O.J. No. L 154, 21.6.03, p.114) as corrected by a corrigendum published on 25th July 2003 (O.J. No. L 186, 25.7.03, p.47).

The Regulations–

- (a) prohibit the importation of hot chilli and hot chilli products, except where they are accompanied by an analytical report demonstrating that the product does not contain Sudan red 1 (CAS No. 842 – 07-9) (regulation 3);
- (b) prohibit the placing on the market of such products (regulation 4);
- (c) provide for their enforcement (regulation 5);
- (d) apply, with modifications, certain provisions of the Food Safety Act 1990 for the purposes of the Regulations and provide for sampling and analysis (regulation 6); and
- (e) provide for the destruction of hot chilli or hot chilli products which have been illegally imported or illegally placed on the market (regulation 7).

No regulatory impact assessment has been prepared in relation to these Regulations.





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Control) (Scotland) Regulations 2003**

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