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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 176**

**AGRICULTURE  
FOOD**

**The Guar Gum (Restriction on First Placing  
on the Market) (Scotland) Regulations 2008**

<i>Made</i>	- - - -	<i>2nd May 2008</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>2nd May 2008</i>
<i>Coming into force</i>	- -	<i>5th May 2008</i>

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

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Guar Gum (Restriction on First Placing on the Market) (Scotland) Regulations 2008, and come into force on 5th May 2008.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“the Commission Decision” means Commission Decision [2008/352/EC](#) imposing special conditions governing guar gum originating in or consigned from India due to contamination risks of those products by pentachlorophenol and dioxins<sup>(2)</sup>;

“guar gum product” means—

(a) guar gum, falling within CN code 1302 32 90, originating in or consigned from India, and intended for animal or human consumption; and

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(1) [1972 c. 68](#). The functions conferred on the Minister of the Crown under section 2(2) of the 1972 Act, in so far as exercisable within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act [1998 \(c. 46\)](#). In so far as not so transferred, and insofar as relating to food (including drink) including the primary production of food, that function was 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 insofar as relating to certain animal feeding stuffs and feed additives for use in animal nutrition, that function was transferred by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006 ([S.I. 2006/304](#)). Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act [2006 \(c. 51\)](#).

(2) O.J. No. L 117, 1.5.08, p.42.

- (b) compound feedingstuffs and foodstuffs containing at least 10% guar gum originating in or consigned from India; and

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(3)</sup>.

(2) For the purposes of these Regulations any expression used both in these Regulations and in the Commission Decision has the meaning it bears in the Commission Decision.

### **Restriction on first placing on the market of guar gum products**

**3.**—(1) Notwithstanding the provisions of the Miscellaneous Food Additives Regulations 1995<sup>(4)</sup>, and subject to paragraph (3), no person shall first place on the market any guar gum product unless—

- (a) the conditions specified in the following provisions of Article 2 of the Commission Decision are complied with in relation to that product—
  - (i) paragraphs (1) to (3);
  - (ii) the second and third sentences of paragraph (4); and
  - (iii) the first sentence of paragraph (5); and
- (b) arrangements have been made to ensure compliance with the conditions specified in the first sentence of Article 4 of the Commission Decision in relation to that product.

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

(3) The conditions specified in Article 2(1) and (5) of the Commission Decision do not apply to any guar gum product that leaves the country of origin or consignment before 5th May 2008.

### **Enforcement**

**4.**—(1) Each local authority shall execute and enforce these Regulations and the Commission Decision within its area.

(2) A local authority may authorise in writing any person (whether or not an officer of that authority) to act in matters arising under these Regulations.

(3) A person authorised under paragraph (2) shall have the same powers as an authorised officer of an enforcement authority under section 32 (powers of entry) of the Food Safety Act 1990<sup>(5)</sup>.

(4) Each local authority shall give such assistance and information to the Scottish Ministers and the Food Standards Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

### **Recovery of costs**

**5.** The costs mentioned in Article 6 of the Commission Decision shall be payable by the food business operator to the local authority and shall be recoverable by the local authority as a debt from the food business operator concerned.

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(3) 1994 c. 39.

(4) S.I. 1995/3187, to which there are amendments not relevant to these Regulations.

(5) 1990 c. 16. Section 32 was amended by the Criminal Justice and Police Act 2001 (c. 16), Schedule 2(2), paragraph 18.

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

6.—(1) The following provisions of the Food Safety Act 1990 shall apply for the purposes of these Regulations with the modification that any reference in those provisions to that 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 21 (defence of due diligence)(<sup>6</sup>), with the modification that subsections (2) to (4) shall apply in relation to an offence under regulation 3(2) as they apply in relation to an offence under section 14 or 15, that in subsections (2)(a) and (3)(b) the references to “food” shall be deemed to be references to feed or food and that in subsection (4)(b) the references to “sale or intended sale” shall be deemed to be references to “first placing on the market”;
- (c) section 33 (obstruction etc. of officers);
- (d) section 35(1) to (3) (punishment of offences), in so far as it relates to offences under section 33 as applied by sub-paragraph (c);
- (e) section 36 (offences by bodies corporate);
- (f) section 36A (offences by Scottish partnerships)(<sup>7</sup>); and
- (g) section 44 (protection of officers acting in good faith), with the modification that the references to “food authority” shall be deemed to be references to “local authority”.

(2) For the purposes of these Regulations the provisions mentioned in paragraph (1) apply to feed as they apply to food.

St Andrew’s House,  
Edinburgh  
2nd May 2008

*PAM WHITTLE*  
A member of the staff of the Scottish Ministers

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(<sup>6</sup>) Section 21 was amended by [S.I. 2004/3279](#), regulation 13.

(<sup>7</sup>) Section 36A was inserted by the Food Standards Act 1999 ([c. 28](#)), Schedule 5, paragraph 16.

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## EXPLANATORY NOTE

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

These Regulations, which extend to Scotland only, implement Commission Decision [2008/352/EC](#) imposing special conditions governing guar gum originating in or consigned from India due to contamination risk of those products by pentachlorophenol and dioxins (“the Commission Decision”).

By virtue of European Parliament and Council Directive [95/2/EC](#) (O.J. No. L 61, 18.3.95, p.1), the additive guar gum is legally authorised for use in all Member States. That Directive was implemented by the Miscellaneous Food Additive Regulations 1995. However, the Commission Decision imposes special conditions for guar gum and products containing guar gum originating or consigned from India.

These Regulations—

- (a) provide that no person shall first place on the market any “guar gum product” (defined in regulation 2(1)), except where various conditions specified in the Commission Decision have been complied with (regulation 3(1));
- (b) provide that a person who knowingly contravenes that prohibition is guilty of an offence and prescribe penalties for that offence (regulation 3(2));
- (c) make special provision in relation to products that leave or are consigned from India before 5th May 2008 (regulation 3(3));
- (d) provide for their enforcement (regulation 4);
- (e) provide for the recovery of costs incurred from sampling, analysis, storage or measures following non-compliance (regulation 5); and
- (f) apply with modifications certain provisions of the Food Safety Act 1990 for the purposes of the Regulations (regulation 6).

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