

## EXECUTIVE NOTE

### THE FOOD IRRADIATION (SCOTLAND) REGULATIONS 2010 SSI 2010/328

#### Description

1. This instrument provides for the implementation in Scotland of Commission Decision 2010/172/EU amending Decision 2002/840/EC as regards the list of approved facilities in third countries for the irradiation of foods (OJ No. L75, 23.3.2010, p.33).
2. The instrument will amend Schedule 4 (List of facilities outside the European Community) to the Food Irradiation (Scotland) Regulations 2009 (S.S.I. 2009/261) in order to implement this Commission Decision - which adds three facilities in India to the list of approved third country facilities. The 2009 Regulations regulate the treatment of food with ionising radiation (X-rays, gamma rays or beams of electrons), referred to as “food irradiation”, and the importation and sale of irradiated food.
3. This instrument will also amend Schedule 3 (List of approved facilities in member States) and make a drafting improvement to Schedule 2 (Licences) to the 2009 Regulations.
4. This instrument substitutes for “6 months” in regulation 10(1)(a) (offences and penalties), the period of “12 months” so as to bring the penalty of imprisonment on summary conviction into line with section 45 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6).
5. The instrument is subject to negative resolution procedure and applies to Scotland only; parallel legislation is to be enacted in England, Wales and Northern Ireland.

#### Policy Objective

6. Article 7(4) of Directive 1999/2/EC (O.J. No. L66, 13.3.1999, p.16) requires the Commission to publish details of member State food irradiation facilities and any changes in their status in the Official Journal (OJ). These details were initially published in the C Series of the OJ, but since 2004 have been replaced by a list published solely on the Commission website. On 4 January 2010, the version of this list on which Schedule 3 to the 2009 Regulations was based was replaced with the current (undated) list, which includes three new member State facilities. Recent correspondence between the Agency and the Commission has confirmed that it was considered by the Commission that it sufficed for “official publication” to be on the website rather than in the OJ but that, following our query, they are now reconsidering this position. In the meantime, as the Commission clearly intends that the website list should be the official list for the purposes of Article 7(4) of Directive 1999/2/EC, we are implementing the new list accordingly. If the new list is not implemented, irradiated food from the three newly listed member State facilities, each approved by the relevant Member

State in accordance with Directive 1999/2/EC, would not be reflected in the 2009 Regulations, which would obstruct legitimate free trade within the European Union.

### **Matters of special interest to the Subordinate Legislation Committee (SLC)**

7. The instrument makes a drafting improvement to paragraph 9(1)(b) of Schedule 2, as recommended by the Subordinate Legislation Committee during scrutiny of the 2009 Regulations (SLC Report reference SL/S3/09/R39; paragraphs 17 & 18).

### **Policy Background**

8. Food irradiation is not widely utilised in the UK. There is a single licensed facility in the UK, which is licensed to irradiate a variety of herbs and spices and few irradiated foods are on sale on the UK market; however it is gaining favour in other parts of the world, such as the USA, India and in the Far East. It is therefore important that we ensure our procedures for accepting food irradiated outside the Community meets the legal standards set by the European Commission.
9. The processes of treating food with X-rays, gamma rays or beams of electrons is currently controlled under Directive 1999/2/EC relating to foods and food ingredients treated with ionising radiation. The provisions of that Directive are fully implemented by The Food Irradiation (Scotland) Regulations 2009.
10. Article 9 of Directive 1999/2/EC states that irradiated food must not be imported from a third-country unless it originates from a facility approved by the European Union. Article 9 also includes the procedures by which new facilities can be approved. In 2008, three facilities in India were inspected under these procedures and have now been added to the list of approved facilities by Commission Decision 2010/172/EC. This Decision amends Decision 2002/840/EC.

### **Territorial Extent and Application**

11. This instrument applies in relation to Scotland only. Separate but parallel legislation is being made in England, Wales and Northern Ireland.

### **European Convention on Human Rights**

12. This instrument does not raise any issue with regard to the European Convention on Human Rights.

### **Consultation**

13. A six-week consultation was undertaken between the 25 June and 6 August 2010. The consultation was held for six weeks because of the need to implement the Decision as soon as possible after publication. Commission Decision 2010/172/EU was published on 23 March 2010 and came into force on 29 March when it was formally notified to the UK by the Commission, but the making of the instrument was interrupted due to the general election and dissolution of Westminster Parliament.

14. No substantive comments were received; though responses were received from two stakeholders simply noting receipt of the consultation.

### **Financial Effects**

15. As there will be no impact on businesses (or other sectors) from this measure, an Impact Assessment has not been produced. Ministerial exemption from producing a Business & Regulatory Impact Assessment was requested & provided on 15 June 2010.

### **Food Standards Agency in Scotland**

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#### **Contact:**

Will Munro  
Food Standards Agency in Scotland,  
St Magnus House, 25 Guild Street,  
Aberdeen, AB11 6NJ  
Tel No: 01224 285161  
Email: [will.munro@foodstandards.gsi.gov.uk](mailto:will.munro@foodstandards.gsi.gov.uk)