

## **EXECUTIVE NOTE**

### **THE SPECIFIED PRODUCTS FROM CHINA (RESTRICTION ON FIRST PLACING ON THE MARKET) (SCOTLAND) AMENDMENT REGULATIONS 2012**

#### **SSI 2012/3**

1. The above instrument was made by the Scottish Ministers in exercise of the powers conferred by Section 2(2) of the European Communities Act 1972 and all other powers enabling them to do so.

#### **Policy Objectives**

2. The purpose of the instrument is to implement, in Scotland, emergency Commission Implementing Decision 2011/884/EU<sup>1</sup> ('the 2011 Decision') on emergency measures regarding unauthorised genetically modified (GM) rice in rice products originating from China, and repealing Decision 2008/289/EC ('the 2008 Decision').

3. The 2008 Decision set out restrictions and conditions in relation to the importation of rice and rice products from China due to contamination with a type of unauthorised genetically modified organism (GMO). These measures have now been strengthened by the 2011 Decision.

4. The 2008 Decision was originally implemented in Scotland by the Specified Products from China (Restriction on First Placing on the Market) (Scotland) Regulations 2008 (SSI 2008/148). The 2011 Decision will be implemented by means of an amendment to the 2008 Regulations.

#### **Policy Background**

4. In 2006, EU Member States began detecting the presence of the unauthorised GM rice variety 'Bt63' in consignments of rice and rice products imported from China. The Commission took matters up with the Chinese authorities and, after initial improvement, the situation worsened again in 2007. The Commission therefore brought forward emergency Commission Decision 2008/289/EC requiring additional import controls for consignments of rice and rice products imported from China ("the Bt63 Decision").

5. In 2010, Germany identified, and notified via the EU Rapid Alert System for Food and Feed (RASFF), the presence of two new GM rice varieties in imported food (referred to as Kefeng 6 and KMD1) which are not authorised in the EU or China and the Commission wrote to the Chinese authorities raising its concerns. Inspection missions to China by the Commission's Food and Veterinary Office (FVO) in Autumn 2008 and Spring 2011 indicated uncertainty as to the level, number and type of GM rice varieties which may be circulating in China and

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<sup>1</sup> OJ No. L343, 23.12.2012, p. 140

consequently that there was a high risk of unauthorised GMOs being present in rice and rice products imported from China.

6. In the light of the outcomes of the FVO missions, the European Commission brought forward a proposal for emergency import restrictions to replace those set out in the Bt63 Decision. The proposal was agreed by Member States by unanimity at a meeting of the EU Standing Committee on the Food Chain and Animal Health (SCOFAH) on 14 November 2011 and was published formally in the Official Journal of 23 December 2011 as Commission Implementing Decision 2011/884/EU. It comes into force on 12 January 2012.

7. The requirements of the emergency Decision are summarised below:

- i. Food and feed business operators must give adequate prior notice of the arrival of consignments falling within the Combined Nomenclature (CN) customs codes listed at Annex I (“relevant consignments”).
- ii. Relevant consignments must be accompanied by either:
  - An analytical report confirming the absence of GM rice material, based on the analytical methods stipulated in Annex II and a health certificate signed and verified by an authorised representative of the Chinese import/export authority; or
  - A statement indicating that the products in the consignment do not contain or consist of rice and have not been produced from rice.
- iii. Consignments that are not accompanied by the required documentation must be re-dispatched to the country of origin or destroyed.
- iv. All consignments accompanied by analytical reports and health certificates must be sampled and analysed in accordance with the methods stipulated in Annex II to ensure the absence of unauthorised GM rice material.
- v. Quarterly reports of the results of analytical tests carried out and the number of consignments rejected due to the absence of the necessary documentation must be submitted to the European Commission to allow it to monitor the effectiveness of the emergency Decision.
- vi. All costs arising from the controls undertaken must be borne by food and feed business operators.

## **Legislative Context**

8. Regulation (EC) No. 1829/2003<sup>2</sup> stipulates that food and feed containing GM material cannot be placed on the market in the EU unless the associated genetically modified organism has been authorised under the Regulation, following a rigorous safety assessment.

9. The emergency Decision is made under Article 53 of Regulation (EC) No. 178/2002 (emergency measures for food and feed). It lays down additional controls for the import of such products containing unauthorised GM rice.

## **Consultation**

11. The emergency Commission Decision was published in the Official Journal 23 December 2011 and enters into force across all EU Member States 20 days later on 12 January 2012. The amending Scottish Statutory Instrument (SSI), which comes into force on 12 January 2012 and which implements the emergency Decision, was presented for the Cabinet Secretary's signature (10 January 2012) and laid before Parliament (12 January 2012) as soon as was practicable. Due to the tight timescales it is necessary that the SSI (negative procedure) comes into force without complying with the 28-day scrutiny period. This avoids a gap in import controls between the repeal of the current Decision and the implementation of the new Decision, and any associated risk of food and animal feed containing unauthorised GMOs entering the UK and being released into free circulation within the EU. The existence of a gap in import controls would not be viewed favourably by the Commission or other Member States and we consider the risk of challenge or infraction proceedings by the Commission to be high if this were to happen.

12. Due to the tight timescales, the Food Standards Agency (FSA) – which has policy responsibility for GM food and animal feed - was unable to finalise a Business and Regulatory Impact Assessment (BRIA) or conduct a formal 12-week public consultation before the SSI was made by the Cabinet Secretary. However, the FSA consulted stakeholders informally during mid-December on the draft Commission Decision and in early January on both published Commission Decision and the near final draft SSI. In addition the FSA held a meeting with industry, enforcement and consumer partners on 15 December 2011 to discuss the new legislation, its implementation and its impact. The FSA will complete the necessary consultation and BRIA work as soon as possible.

## **Financial Implications**

13. As with the previous import controls on rice and rice products from China, all costs arising from the official controls required by the 2011 Decision must be borne by food and feed business operators. Additional impact falling on operators will chiefly arise from the

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<sup>2</sup> Regulation (EC) No.1829/2003 on Genetically Modified Food and Feed

costs of sampling and analysis of an increased number of consignments and their storage pending receipt of analytical results. An additional impact will also fall on Enforcement Authorities and the FSA due to the increased number of analytical results that will need to be reported to the Commission.

## **Impact**

14. Food and feed business operators that import rice or rice products originating in, or consigned from, China will be affected by the emergency Decision and this instrument, as will wholesalers and retailers (including SMEs).

15. Operators will need to be aware of the differences between the requirements of the Bt63 Decision and those of the emergency Decision. As such, there will be one-off costs associated with operators reading and familiarising themselves with the emergency Decision and the amendments this instrument makes to the 2008 Regulations.

16. The actual costs incurred by Enforcement Authorities in undertaking the official controls required by the emergency Decision must be borne by food and feed business operators. As such, operators will bear the additional impact arising from the import restrictions set down by the emergency Decision.

17. There is no particular impact on charities or voluntary bodies or rural areas. The commodities which are subject to the emergency Decision may be used by particular ethnic or racial groups. As such, consequential impact on these groups may arise as regards the availability of products.

18. Impact on the public sector will fall chiefly on Enforcement Authorities with regard to the submission of the results of the analytical tests they carry out on relevant consignments to the FSA for onward transmission to the Commission on a quarterly basis. A small additional impact on the FSA will also arise in this regard.

19. A more accurate picture of cost implications will emerge during the consultation process and the preparation of the BRIA.

## **Monitoring**

### *Monitoring*

20. The emergency Decision requires Member States to submit to the Commission a quarterly report of all results of analytical tests carried out during the period, both positive and negative, to enable them to monitor its effectiveness.

21. The Agency will work with Enforcement Authorities where problems or suspected infringements of the legislation arise. The effectiveness of the instrument will be also be

monitored via general feedback from industry and Enforcement Authorities on the number of consignments that fail to comply with the Decision.

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## **List of stakeholders consulted informally**

Jane Haywood – Lactalis McLelland Ltd

Colm Fraser – Comhairle nan Eilean Siar

Donnie Mackay – Moray Council

John Watt – Fife Council

John Drummond – Scottish Grocers Federation

Susan Black – Aberdeen City Council

Howard Davies – Scottish Crop Research Institute

David Miskin – Food Innovation Institute (F2i)

Julia Clarke – Which

John Sleith – Falkirk Council

Craig Smith – West Lothian Council

Colin Sibbald – City of Edinburgh Council

Deborah McBean – Women’s Food and Farming Union

Gordon Steele – Scotch Whisky Research Institute

Graham Pollock – West Dunbartonshire Council

Ron Swinton – Scottish Borders Council

Tom Bell – REHIS

Jane White – Glasgow Scientific Services

Paul Todd – East Ayrshire Council

Tom Preston – Scottish Environmental Research Centre

Kirk Hunter – Dairy UK – Scotland

Roy Stewart – Fife Council

Andrew Mackie – City of Edinburgh Council

Les Webster – Microgram

Steve Chambers – Neogen Europe Ltd

Leslie Paton – Dumfries and Galloway Council

Jim Stirling – South Lanarkshire Council

John Hutchison – Hutchison Associates Ltd

Morag Garden – Scotch Whisky Association

Derek Stewart – Scottish Crop Research Institute

Carole Jackson – Aberdeen City Council

John Arthur – Inverclyde Council

John Bell – Aberdeenshire Council

Gordon McKen – Scottish Pig Producers Ltd

Catherine Reilly – North Ayrshire Council

Helen Brierley – Kettle Produce Ltd

Margaret Smith – M&D Catering

Ruth Birt – Regulatory Solutions

Albert Oswald – Dundee City Council

James McLennan – Moray Council

Sarah Lemmon – MacPhie of Glenbervie Ltd

Alan Rowe – Rowett Research Services Ltd

Evelyn Allardyce – Angus Council

Ian Goodall – Scotch Whisky Research Institute

Frances Gallagher – FG Associates

Joe Harkin – East Dunbartonshire Council

Alan Long - Vegetarian Economy & Green Agriculture (VEGA)

Mark Herron – City of Edinburgh Council

Robert Watson – South Lanarkshire Council

Alan Symon – City of Edinburgh Council

Ken Jones – Scottish Borders Council

James Sneddon – East Renfrewshire Council

Alan Yates – Highland Council

Jervis Browne – Angus Council

Mike Patterson – William Yule & Son Ltd

Bridget Frowd – Brown Brothers Ltd

Graeme Ross – J G Ross (Bakers) Ltd

Paul Weeks - Wicken Fen Wholesome Foods

Angus Thomson – Fife Council

John Arthington – Dumfries and Galloway Council

Lindsay Matthew – Dundee City Council

Les Webster – Mackies of Scotland

Lorraine Lawrie – East Renfrewshire Council

Andrew Robertson – Ingram Brothers Ltd

Caroline Klinge – Klinge Foods Ltd

Frank Feechan – Dundee City Council

Hazel Gordon - Food Industry (North) Development Services

John Stevenson – West Dunbartonshire Council

Edel Ryan – Midlothian Council

Ross Buchanan – Midlothian Council

Tom Hayes – Soil Association Scotland

Deborah Roberts - Scottish Organic Producers Association

Anthony Jackson – Munlochy GM Vigil

Tolga Dagtas – Walkers Shortbread Ltd

Keith Redpath - Scottish Beef Cattle Association

John Arthur – Rowett Research Institute

Ian Robertson – Aberdeenshire Council

Alan Morrison – Argyll and Bute Council

Susan Mooney – City of Edinburgh Council

Derek Collins – Dumfries and Galloway Council

Alex McPhee – East Ayrshire Council

Kenny Simpson – East Dunbartonshire Council

David Evans – East Lothian Council

Anne Higgins – East Renfrewshire Council

Fraser Thomson – Fife Council

Alistair Thomson – Highland Council

Peter Steven – Midlothian Council

Kevin McMunn – North Ayrshire Council

Crawford Morgan – North Lanarkshire Council

Tony Marsh – Orkney Islands Council

Jim Dixon – Perth and Kinross Council

Suzanne McGinn – Renfrewshire Council

Ken Jones – Scottish Borders Council

Margaret Dunne – Shetland Islands Council

David Thomson – South Ayrshire Council

Andrew Blake – West Lothian Council

Susan Love – Federation of Small Businesses

Alan Hardie – Paterson Arran Ltd

Alan Mawson – Dumfries and Galloway Council

Alison Mole – ADAS Scotland

Janice Drew – Rowett Research Institute

Lindsay McGregor – Cosla

Flora McLean – Scottish Food and Drink Federation

Alastair Brown – Glasgow City Council

Jane Couper – Dundee City Council

Brian Simpson - Scottish Beef Cattle Association

Penny Johnston – NFU Scotland

Scott Walker – NFU Scotland

Mary Lawton – Scottish Food and Drink Federation

Chris Kauer – Scotch Whisky Association

George Jamieson – NFU Scotland

Paul Bradley – West Lothian Council

Nick Soper – Scotch Whisky Association

Alan Clarke – Scottish Bakers