WELSH STATUTORY INSTRUMENTS

# 2008 No. 1080 (W.114)

# AGRICULTURE, WALES

FOOD, WALES

## The Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008

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| *Made - - - -* | *14 April 2008* |
| *Laid before the National Assembly for Wales - -* | *14 April 2008* |
| *Coming into force - -* | *15 April 2008* |

The Welsh Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 [M1].

The Welsh Ministers have been designated for the purpose of that section in relation to measures in respect of food (including drink) including the primary production of food and measures relating to feed produced for or fed to food-producing animals [M2].

As required by Article 9 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 [M3] there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

**Marginal Citations**

**M1** 1972 c. 68.

**M2** S.I. 2005/1971.

**M3** OJ No. L31, 1.2.2002, p.1, as last amended by Commission Regulation (EC) No. 575/2006 amending Regulation (EC) No. 178/2002 of the European Parliament and of the Council as regards the number and names of the permanent Scientific Panels of the European Food Safety Authority (OJ No. L100, 8.4.2006, p.3).

### Title, application and commencement

**1.** The title of these Regulations is the Specified Products from China (Restriction on First Placing on the Market (Wales) Regulations 2008; they apply in relation to Wales and come into force on 15 April 2008.

## Interpretation

**2.**—(1) In these Regulations—

"the Agency" ("*yr Asiantaeth*") means the Food Standards Agency;

"authorised officer" ("*swyddog awdurdodedig*"), in relation to a feed authority or a food authority, means any person (whether or not an officer of the authority) who is authorised by it in writing, either generally or specially, to act in matters arising under these Regulations;

**[**[F1]"the Commission Decision" ("*Penderfyniad y Comisiwn*") 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, as amended by Commission Implementing Decision 2013/287/EU;**]**

"feed" ("*bwyd anifeiliaid*") has the meaning given to it in Article 3.4 of Regulation 178/2002;

"feed authority" ("*awdurdod bwyd anifeiliaid*") means the authority required by section 67(1A) of the Agriculture Act 1970 [M4] to enforce that Act within its area;

"food" ("*bwyd*") has the meaning given to it in Article 2 of Regulation 178/2002;

[F2]…

"food authority" ("*awdurdod bwyd*") has the meaning that it bears by virtue of section 5(1A) of the Food Safety Act 1990 [M5];

"operator" ("*gweithredydd*") has the meaning that it bears in the Commission Decision;

**[**[F3]"placing on the market" has the meaning given to it in Article 3.8 of Regulation 178/2002;**]**

"Regulation 178/2002" ("*Rheoliad 178/2002*") means 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; and

"specified product" ("*cynnyrch penodedig*") means any product listed in **[**[F4]Annex I**]** to the Commission Decision that originates from or has been consigned from China.

(2) Where any functions under the Food Safety Act 1990 are assigned—

(a) by an order under section 2 of the Public Health (Control of Disease) Act 1984 [M6], to a port health authority; or

(b) by an order under section 6 of the Public Health Act 1936 [M7], to a joint board for a united district,

any reference in these Regulations to a food authority will be construed, so far as relating to those functions, as a reference to the authority to whom they are so assigned.

**[**[F5](3) Any expression used in the Commission Decision and in these Regulations has the same meaning in these Regulations as it bears in the Commission Decision.**]**

### Textual Amendments

**F1** Words in reg. 2(1) substituted (4.7.2013) by The Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2013 (S.I. 2013/1653), regs. 1, **2(2)**

**F2** Words in reg. 2(1) omitted (12.1.2012) by virtue of The Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2012 (S.I. 2012/64), regs. 1, **2(2)(a)(ii)**

**F3** Words in reg. 2(1) inserted (12.1.2012) by The Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2012 (S.I. 2012/64), regs. 1, **2(2)(a)(iii)**

**F4** Words in reg. 2(1) substituted (12.1.2012) by The Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2012 (S.I. 2012/64), regs. 1, **2(2)(a)(iv)**

**F5** Reg. 2(3) inserted (12.1.2012) by The Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2012 (S.I. 2012/64), regs. 1, **2(2)(b)**

**Marginal Citations**

**M4** 1970 c. 40.
**M5** 1990 c. 16.
**M6** 1984 c. 22.
**M7** 1936 c. 49; section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.

## [F6Restriction on placing on the market of specified products]

**3.**—[F7(1) The placing on the market of any specified product is prohibited unless —

(a) in relation to the product —

(i) the requirement contained in Article 3.2 of the Commission Decision, in respect of products containing, consisting or produced from rice, to transmit a common entry document or common veterinary entry document, as appropriate, with relevant parts completed, has been met, and

(ii) conditions specified in Article 4 of the Commission Decision have been complied with; and

(b) where the consignment of the specified 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.**]**

(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.

**Textual Amendments**

**F6** Reg. 3 heading substituted (12.1.2012) by The Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2012 (S.I. 2012/64), regs. 1, **2(3)**
**F7** Reg. 3(1) substituted (4.7.2013) by The Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2013 (S.I. 2013/1653), regs. 1, **2(3)**

## Notification of positive results

F8**4.** . . . . . .

**Textual Amendments**

**F8** Reg. 4 omitted (12.1.2012) by virtue of The Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2012 (S.I. 2012/64), regs. 1, **2(4)**

## Enforcement

**5.**—(1) It is to be the duty of each feed authority to execute and enforce these Regulations within its area in relation to feed.

(2) It is to be the duty of each food authority to execute and enforce these Regulations within its area in relation to food.

(3) For the purposes of enabling the feed authority to exercise its duty under paragraph (1) and the food authority to exercise its duty under paragraph (2), an authorised officer of the authority concerned will ensure that the requirements referred to in paragraph (4) are adhered to.

**[**[F9](4) The requirements are those specified in —

(a) Article 5 of the Commission Decision (which is concerned with the conditions under which specified 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).**]**

(5) Each feed authority and each food authority is to give such assistance and information to the Welsh Ministers and the Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

**Textual Amendments**

**F9** Reg. 5(4) substituted (12.1.2012) by The Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2012 (S.I. 2012/64), regs. 1, **2(5)**

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

**6.** The following provisions of the Food Safety Act 1990 apply for the purposes of these Regulations with the modification that any reference in those provisions to that Act or Part thereof is to 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) [M8], with the modification that subsections (2) to (4) 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" will be deemed to be references to feed or food and that in subsection (4)(b) the references to "sale or intended sale" are to be deemed to be references to " **[**[F10]placing on the market**]**";

(c) section 32 (powers of entry), with the modification that in subsection (1) the reference to "an enforcement authority" is to be deemed to be a reference to a feed authority or a food authority, the references to "the authority's area" are to be deemed to be references to the authority's area and the reference to "a food authority" will be deemed to be a reference to a feed authority or a food authority;

(d) section 33(1) (obstruction etc. of officers);

(e) section 33(2), with the modification that the reference to "any such requirement as is mentioned in subsection (1)(b) above" will be deemed to be a reference to any such requirement as is mentioned in section 33(1)(b) as applied by sub-paragraph (d);

(f) section 35(1) (punishment of offences) [M9], in so far as it relates to offences under section 33(1) as applied by sub-paragraph (d);

(g) section 35(2) and (3) [M10], in so far as it relates to offences under section 33(2) as applied by sub-paragraph (e);

(h) section 36 (offences by bodies corporate);

(i) section 36A (offences by Scottish partnerships) [M11]; and

(j) section 44 (protection of officers acting in good faith), with the modification that the references to "food authority" will be deemed to be references to feed authority or food authority.

**Textual Amendments**

**F10** Words in reg. 6(b) substituted (12.1.2012) by The Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2012 (S.I. 2012/64), regs. 1, **2(6)**

**Marginal Citations**

**M8** Section 21 was amended by S.I. 2004/3279.

**M9** Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c. 44), **Schedule 26**, paragraph 42, from a date to be appointed.

**M10** Section 35(3) was amended by S.I. 2004/3279.

**M11** Section 36A was inserted by the Food Standards Act 1999 (1999 c. 28), **Schedule 5**, paragraph 16.

## [[F11]Expenses arising from official controls

**7.** Expenses charged by a feed authority or a food authority to an operator pursuant to Article 8 of the Commission Decision will be payable by the operator on the written demand of the authority.

**Textual Amendments**

**F11** Regs. 7, 8 inserted (12.1.2012) by The Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2012 (S.I. 2012/64), regs. 1, **2(7)**

## Transitional provision

[F12]**8.** . . . . . .

**Textual Amendments**

**F12** Reg. 8 omitted (26.7.2018) by virtue of The Food and Feed (Miscellaneous Amendments and Revocations) (Wales) Regulations 2018 (S.I. 2018/806), regs. 1(3), **16**

*Gwenda Thomas*
Under authority of the Minister for Health and Social Services, one of the Welsh Ministers**]**

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*
These Regulations implement in relation to Wales Commission Decision 2008/289/EC on emergency measures regarding the unauthorised genetically modified organism "Bt 63" in rice products (OJ No. L96, 9.4.2008, p.29).
These Regulations —

(a) prohibit the first placing on the market of any "specified product" (defined in regulation 2(1)), except where —

  (i) it is accompanied by—

    (aa) an original analytical report based on a particular construct-specific method for detection of the genetically modified rice "Bt 63" issued by an official or accredited laboratory demonstrating that the product does not contain or consist of or is not produced from the genetically modified rice "Bt 63", or

    (bb) if it does not contain or consist of rice or is not produced from rice, a statement from the operator responsible for the consignment indicating that the food does not contain or consist of rice or is not produced from rice; or

  (ii) the operator established in the Community who is responsible for the first placing on the market of the product has had the product tested and the analytical report in respect of that test demonstrates that it does not contain the genetically modified rice "Bt 63" (*regulation 3(1)(a)*); and

  (iii) specified requirements for split consignments are complied with (*regulation 3(1)(b)*);

(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) require an operator who becomes aware of a positive result of a test for the presence of the genetically modified rice "Bt 63" in a specified product that is under his or her control to inform the Food Standards Agency of that result immediately *regulation 4(1)*);

(d) provide that a person who without reasonable excuse fails to comply with that requirement is guilty of an offence and prescribe penalties for that offence (*regulation 4(2)*);

(e) provide for their enforcement (*regulation 5*); and

(f) apply with modifications certain provisions of the Food Safety Act 1990 (1990 c. 16) for the purposes of the Regulations (*regulation 6*).

**Changes to legislation:**
There are currently no known outstanding effects for the The Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008.