
STATUTORY INSTRUMENTS

2012 No. 64 (W.15)

**AGRICULTURE, WALES
FOOD, WALES**

**The Specified Products from China (Restriction on First
Placing on the Market) (Wales) (Amendment) Regulations 2012**

<i>Made</i>	- - - -	<i>11 January 2012</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>12 January 2012</i>
<i>Coming into force</i>	- -	<i>12 January 2012</i>

The Welsh Ministers make the following Regulations in exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972⁽¹⁾.

The Welsh Ministers have been designated for the purposes of that section in relation to measures relating to food (including drink) including the primary production of food and measures relating to feed produced for or fed to food-producing animals⁽²⁾.

Title and commencement

1. The title of these Regulations is the Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2012 and they come into force on 12 January 2012.

Amendment of the Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008

2.—(1) The Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008⁽³⁾ are amended in accordance with paragraphs (2) to (7).

(2) In regulation 2 (interpretation) —

(1) 1972 c. 68.

(2) The relevant designation order is the European Communities (Designation) (No.2) Order 2005 (S.I. 2005/1971). Article 4 of that order designated the National Assembly for Wales constituted by the Government of Wales Act 1998 (c. 38) (“the Assembly”) for the purposes of section 2(2) of the European Communities Act 1972 in relation to the matters specified in Schedule 3 to that order which includes measures relating to food (including drink) including the primary production of food and measures relating to feed produced for or fed to food producing animals. Functions exercisable by the Assembly under that order are now vested in the Welsh Ministers by virtue of section 162 and paragraph 30(2)(b) of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(3) S.I. 2008/1080 (W.114).

- (a) in paragraph (1) —
- (i) for the definition of “the Commission Decision” substitute the following definition —
- “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⁽⁴⁾;
- (ii) omit the definition of “first placing on the market”;
- (iii) after the definition of “operator” insert the following definition —
- “placing on the market” has the meaning given to it in Article 3.8 of Regulation 178/2002;”, and
- (iv) in the definition of “specified product”, for “the Annex” substitute “Annex I”; and
- (b) insert the following paragraph immediately after paragraph (2) —
- “(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.”
- (3) For the heading to and paragraph (1) of regulation 3 (restriction on first placing on the market of specified products), substitute the following —

“Restriction on placing on the market of specified products

- 3.—(1) The placing on the market of any specified product is prohibited unless —
- (a) the conditions specified in Article 4 of the Commission Decision have been complied with in relation to the product; 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.”.
- (4) Regulation 4 (notification of positive results), is omitted.
- (5) For paragraph (4) of regulation 5 (enforcement) substitute the following —
- “(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).”.
- (6) In paragraph (b) of regulation 6 (application of various provisions of the Food Safety Act 1990), for “first placing on the market” substitute “placing on the market”.
- (7) Insert the following regulations immediately after regulation 6 —

“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.

(4) OJ No. L343, 23.12.2011, p.140.

Transitional provision

8. The prohibition in regulation 3(1) does not apply in relation to any specified product which left China prior to 1st February 2012 provided that—

- (a) the sampling and analysis have been conducted in accordance with Article 4(3) of the Commission Decision; and
- (b) the placing on the market of the product would not have constituted an offence under these Regulations as they stood immediately before the coming into force of the Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2012.”.

11 January 2012

Lesley Griffiths
The Minister for Health and Social Services, one
of the Welsh Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which come into force on 12 January 2012, amend the Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008 (S.I.2008/1080 (W.114)) (“the 2008 Regulations”) in order to implement 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 (OJNo. L343, 23.12.2011, p.140) (“the Commission Decision”). The Commission Decision provides for import restrictions that previously applied to Bt 63 genetically modified rice to apply, with modifications, to all unauthorised GM rice.

In particular these Regulations amend the 2008 Regulations by —

- (a) inserting in regulation 2 a definition of the Commission Decision and amending, adding or removing certain other definitions (*regulation 2(2)*);
- (b) amending regulation 3(1), by imposing conditions under which specified products (rice and rice products originating in or consigned from China) may be placed on the market (*regulation 2(3)*);
- (c) omitting regulation 4, which required operators to notify the Food Standards Agency of certain test results (*regulation 2(4)*);
- (d) amending regulation 5(4), which identifies the provisions of the Commission Decision that an enforcement officer of a feed or food authority must ensure are observed (*regulation 2(5)*);
- (e) inserting as new regulation 7 a provision to implement the requirement in Article 8 of the Commission Decision that all costs resulting from the official controls and from any non-compliance must be borne by the food or feed business operator concerned (*regulation 2(7)*), and
- (f) inserting as new regulation 8 a provision implementing the transitional arrangements contained in Article 9 of the Commission Decision (*regulation 2(7)*).

A regulatory impact assessment is in preparation and will be published as soon as completed. Due to the emergency nature of this instrument, the Food Standards Agency was unable to complete the regulatory impact assessment before the coming into force of the instrument.