

2004 No. 56

FOOD

**The Food (Chilli and Chilli Products) (Emergency Control)
(Scotland) Regulations 2004**

Made - - - - - *13th February 2004*

Laid before the Scottish Parliament *13th February 2004*

Coming into force - - - *14th February 2004*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) and of all other powers enabling them in that behalf hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Food (Chilli and Chilli Products) (Emergency Control) (Scotland) Regulations 2004 and shall come into force on 14th February 2004.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

(a) “the Act” means the Food Safety Act 1990(b) and, save where the context otherwise requires and subject to paragraph (2), any expression used both in these Regulations and in the Act has the meaning it bears in the Act;

“chilli or chilli products” means—

- (i) fruits of the genus *Capsicum*, dried and crushed or ground within CN Code 09042090, in whatever form, intended for human consumption; and
- (ii) curry powder within CN Code 091050, in whatever form, intended for human consumption;

“the Commission Decision” means Commission Decision 2004/92/EC on emergency measures regarding chilli and chilli products(c); and

“prohibited substance” means any of the following chemical substances—

- (i) Sudan I (CAS Number 842-07-9);
- (ii) Sudan II (CAS Number 3118-97-6);

(a) 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(3). The functions conferred on a Minister of the Crown under section 2(2) of the 1972 Act, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 1990 c.16.

(c) O.J. No. L 27, 30.1.04, p.52.

- (iii) Sudan III (CAS Number 85-86-9); or
- (iv) Scarlet Red or Sudan IV (CAS Number 85-83-6).

(2) Any term used in the definition of “chilli or chilli products” has the same meaning as in the Commission Decision.

Prohibition on import

3.—(1) Subject to paragraph (2), no person shall import into Scotland any chilli or chilli products unless—

- (a) the conditions specified in Articles 2.1, 2.3, and 4 of the Commission Decision are satisfied in relation to those products; and
- (b) where those products are the subject of sampling and analysis by an authorised officer of a food authority under regulation 5(3)(c) they are found not to contain any prohibited substance.

(2) Paragraph (1) shall not be taken to prohibit the bringing into Scotland—

- (a) from a member State of any chilli or chilli products which are in free circulation within the meaning of Article 23.2, as read with Article 24 of the Treaty establishing the European Community in that member State; or
- (b) from England, Wales or Northern Ireland of chilli or chilli products which have been imported into the United Kingdom in accordance with the Commission Decision.

(3) Any person who knowingly contravenes paragraph (1)(a) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months.

Prohibition on placing on the market

4.—(1) No person shall place on the market any chilli or chilli product which contains any prohibited substance.

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

Enforcement

5.—(1) It shall be the duty of each food authority to execute and enforce these Regulations within its area.

(2) For the purposes of the exercise of the duty referred to in paragraph (1), an authorised officer of the food authority shall—

- (a) ensure that the requirements referred to in paragraph (3) are adhered to; and
- (b) have the same powers of entry as an authorised officer of an enforcement authority under section 32 of the Act for purposes connected with the Act or Regulations or Orders made under the Act.

(3) The requirements are those specified in—

- (a) Article 2.2 of the Commission Decision (which is concerned with documentary checks relating to consignments of chilli or chilli products);
- (b) Article 2.3 of the Commission Decision insofar as requiring the detention under official supervision of products awaiting the results of sampling and analysis by the importer;
- (c) Article 3 of the Commission Decision (which is concerned with the sampling and analysis of such consignments and of chilli or chilli products already placed on the market), other than the requirement to supply the Commission with specified information; and
- (d) Article 4 of the Commission Decision (which is concerned with the case where consignments are split).

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

Application of various provisions of the Food Safety Act 1990 and sampling and analysis

6.—(1) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the 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 33 (obstruction etc. of officers);
- (c) section 35(1) to (3) (punishment of offences), in so far as it relates to offences under section 33(1) and (2) as applied by sub-paragraph (b);
- (d) section 36 (offences by bodies corporate);
- (e) section 36A (offences by Scottish partnerships); and
- (f) section 44 (protection of officers acting in good faith).

(2) Section 29 of the Act (procurement of samples) shall apply for the purposes of these Regulations with the modifications that—

- (a) for “an enforcement authority” there shall be substituted “a food authority”;
- (b) for subsection (b)(ii) there shall be substituted the following—
 - “(ii) is found by the authorised officer at any premises which that officer is authorised to enter by virtue of regulation 5(2)(b) of the Food (Chilli and Chilli Products) (Emergency Control) (Scotland) Regulations 2004;”;
- (c) subsection (c) shall be omitted; and
- (d) for “any of the provisions of this Act or of regulations or orders made under it” in subsection (d) there shall be substituted “the Food (Chilli and Chilli Products) (Emergency Control) (Scotland) Regulations 2004”.

(3) Section 30 (analysis etc. of samples) shall apply for the purposes of these Regulations with the modification that in subsection (1) for “An authorised officer of an enforcement authority who has procured a sample under section 29 above” there shall be substituted—

“An authorised officer of a food authority who has procured a sample under section 29 above as applied for the purposes of the Food (Chilli and Chilli Products) (Emergency Control) (Scotland) Regulations 2004 by regulation 6(2) thereof”.

(4) Where a sample procured under section 29 of the Act as applied for the purposes of these Regulations by paragraph (2) has been analysed in accordance with the provisions of section 30 of the Act as applied by paragraph (3), the owner shall be entitled on request to be supplied with a copy of the certificate of analysis by the food authority.

Destruction of illegal chilli or chilli products

7.—(1) If on an inspection or examination of any chilli or chilli products it appears to an authorised officer of a food authority that they contravene the conditions for import contained in regulation 3(1) or have been placed on the market in contravention of regulation 4(1) the authorised officer shall after appropriate consultation with a person appearing to be the importer or food business operator serve on that person a notice ordering the destruction of the chilli or chilli products within such reasonable period as shall be specified in the notice.

(2) Any notice served under paragraph (1) shall state—

- (a) the right of appeal to the sheriff under paragraph (4); and
- (b) the period within which such an appeal may be brought.

(3) The person appearing to be the importer or food business operator of chilli or chilli products in respect of which a notice has been served under paragraph (1) shall ensure that they are stored until destruction under the supervision of the authorised officer at such place and under such conditions as the authorised officer may in the notice direct.

(4) Any person who is aggrieved by a decision of an authorised officer to serve a notice under paragraph (1) may appeal to the sheriff who may confirm or cancel the notice.

(5) The period within which such an appeal as is mentioned in paragraph (4) may be brought shall be 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and public holidays.

(6) Pending determination of an appeal under paragraph (4), paragraph (3) shall apply to the storage of the chilli or chilli products concerned.

(7) If the sheriff allows an appeal brought under paragraph (4) the food authority shall compensate the owner of the chilli or chilli products concerned for any depreciation in their value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under paragraph (7) shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(9) Any person who breaches the terms of a notice served under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months.

Costs of analysis, storage and destruction

8. The importer or food business operator responsible for the chilli or chilli products concerned shall pay on demand to the food authority any costs incurred by the food authority in respect of the analysis, storage and destruction of any product pursuant to these Regulations.

Revocations

9. The Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (Scotland) Regulations 2003(a) and the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (Scotland) Amendment Regulations 2003(b) are hereby revoked.

MALCOLM CHISHOLM
A member of the Scottish Executive

St Andrew's House,
Edinburgh
13th February 2004

(a) S.S.I. 2003/382.
(b) S.S.I. 2003/493.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Commission Decision 2004/92/EC on emergency measures regarding chilli and chilli products (O.J. No. L 27, 30.1.04, p.52) (“the new Decision”). The new Decision repealed Commission Decision 2003/460/EC on emergency measures regarding hot chilli and hot chilli products (O.J. No. L 154, 21.6.03, p.114). These Regulations replace the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (Scotland) Regulations 2003 (S.S.I. 2003/382) and the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (Scotland) Amendment Regulations 2003 (S.S.I. 2003/493) which implemented Commission Decision 2003/460/EC.

The differences between the new Decision and Commission Decision 2003/460/EC are that–

- (a) the new Decision extends the emergency measures to apply to curry powder in addition to dried and crushed or ground chillies; and
- (b) the new Decision requires that before a consignment of chilli or chilli products can be imported into the Community, the analytical report accompanying the consignment must in addition to showing that the product does not contain Sudan I (CAS Number 842-07-9), show that the product also does not contain the chemical substances Sudan II (CAS Number 3118-97-6), Sudan III (CAS Number 85-86-9) or Scarlet Red or Sudan IV (CAS Number 85-83-6).

These Regulations–

- (a) prohibit the importation of chilli or chilli products, except where they are accompanied by an analytical report demonstrating that the product does not contain any of the prohibited substances referred to above (regulation 3);
- (b) prohibit the placing on the market of chilli or chilli products which contain any such prohibited substance (regulation 4);
- (c) provide for their enforcement (regulation 5);
- (d) apply, with modifications, certain provisions of the Food Safety Act 1990 for the purposes of the Regulations and provide for sampling and analysis (regulation 6);
- (e) provide for the destruction of chilli or chilli products which have been illegally imported or illegally placed on the market (regulation 7);
- (f) make provision as to the payment of the cost of analysis, storage and destruction of products incurred by the food authority under the Regulations (regulation 8); and
- (g) revoke previous controls on chilli and chilli products (regulation 9).

The CN codes referred to in the definition of “chilli and chilli products” are the code numbers of the combined nomenclature established by Regulation 2658/87 on the tariff and statistical nomenclature and on the customs tariff (O.J. No. L 256, 7.9.87, p.1).

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

2004 No. 56

FOOD

**The Food (Chilli and Chilli Products) (Emergency Control)
(Scotland) Regulations 2004**

£3.00

© Crown Copyright 2004

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
150 02/04 19593

