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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 148**

**AGRICULTURE**

**FOOD**

**The Specified Products from China (Restriction on First  
Placing on the Market) (Scotland) Regulations 2008**

<i>Made</i>	- - - -	<i>14th April 2008</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>14th April 2008</i>
<i>Coming into force</i>	- -	<i>15th April 2008</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(1) and all other powers enabling them to do so.

There has been a consultation 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(2).

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Specified Products from China (Restriction on First Placing on the Market) (Scotland) Regulations 2008, and come into force on 15th April 2008.

(2) These Regulations extend to Scotland only.

**Interpretation**

2.—(1) In these Regulations—

“authorised officer”, means a person authorised in accordance with regulation 5;

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- (1) 1972 c. 68 (“the 1972 Act”). Section 2(2) was amended by the Scotland Act 1998 (c. 46) (“the 1998 Act”), Schedule 8, paragraph 15(3), and by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27. The functions conferred on the Minister of the Crown under section 2(2) of the 1972 Act, so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act. Insofar as not so transferred and insofar as relating to food (including drink) including the primary production of food, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2005 (S.I.2005/849), and insofar as relating to feed, those functions were transferred to the Scottish Ministers by the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2006 (S.I. 2006/304)
- (2) O.J. No. L 31, 1.2.02, p.1. The Regulation was amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council (O.J. No. L 245, 29.9.03, p.4) and Commission Regulation (EC) No. 575/2006 (O.J. No. L 100, 8.4.06, p.3).

“the Commission Decision” means Commission Decision [2008/289/EC](#) on emergency measures regarding the unauthorised genetically modified organism “Bt 63” in rice products<sup>(3)</sup>;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994<sup>(4)</sup>; and

“rice product” means any rice product listed in the Annex to the Commission Decision that originates from China or has been consigned from China.

(2) For the purposes of these Regulations any expression used in both these Regulations and in the Commission Decision has the meaning it bears in the Commission Decision.

### **Restriction on first placing on the market of rice products**

3.—(1) No person shall first place on the market any rice product unless—

- (a) the conditions specified in Article 2(1) and (3) and the second and third sentences of paragraph (2) of Article 2 of the Commission Decision are complied with in relation to that product; and
- (b) arrangements have been made to ensure compliance with the condition specified in the first sentence of paragraph (2) of Article 2 of that Decision in relation to that product.

(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, or to imprisonment for a term not exceeding three months or to both.

### **Notification of positive results**

4.—(1) An operator who becomes aware of a positive result of a test for the presence of the genetically modified rice “Bt 63” in a rice product which is under the operator’s control shall inform the Food Standards Agency of that result immediately.

(2) Any person who fails to comply with the obligation in paragraph (1) without reasonable excuse is 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 or to both.

### **Enforcement**

5.—(1) Each local authority shall execute and enforce these Regulations within its area.

(2) A local authority may authorise in writing any person (whether or not an officer of that authority) to act in matters arising under these Regulations.

(3) An authorised officer shall have the same powers as an authorised officer of an enforcement authority under section 32 (powers of entry) of the Food Safety Act 1990<sup>(5)</sup>.

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

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(3) O.J. No. L 96, 9.4.08, p.29.

(4) [1994 c. 39](#).

(5) [1990 c. 16](#). Section 1(1) and 2 (regarding the meaning of “food” and other basic expressions) was substituted by the Food Safety Act 1990 (Amendment) Regulations 2004 (S.I. [2004/2990](#)).

### Recovery of costs

6. The costs mentioned in Article 5 of the Commission Decision shall be payable by the food business operator to the local authority and shall be recoverable by the local authority as a debt from the food business operator concerned.

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

7.—(1) The following provisions of the Food Safety Act 1990 shall apply for the purposes of these Regulations with the modification that any reference in those provisions to that 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 21 (defence of due diligence)(6), with the modification that subsections (2) to (4) shall 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” shall be deemed to be references to feed or food and that in subsection (4)(b) the references to “sale or intended sale” shall be deemed to be references to “first placing on the market”;
- (c) section 33 (obstruction etc. of officers);
- (d) section 35(1) to (3) (punishment of offences)(7), in so far as it relates to offences under section 33 as applied by sub paragraph (c);
- (e) section 36 (offences by bodies corporate);
- (f) section 36A (offences by Scottish partnerships)(8); and
- (g) section 44 (protection of officers acting in good faith), with the modification that the references to “food authority” shall be deemed to be references to “local authority”.

(2) For the purposes of these Regulations the provisions mentioned in paragraph (1) shall apply to feed as they apply to food.

St Andrew’s House,  
Edinburgh  
14th April 2008

*S ROBISON*  
Authorised to sign by the Scottish Ministers

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(6) Section 21 was amended by S.I. 2004/3279.

(7) Section 35(1) is read with the *Criminal Proceedings etc. (Reform) (Scotland) Act 2007* (asp 6), s45. Section 35(3) was amended by S.I. 2004/3279.

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

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations which extend to Scotland only, implement Commission Decision [2008/289/EC](#) on emergency measures regarding the unauthorised genetically modified organism “Bt 63” in rice products.

These Regulations—

- (a) prohibit the first placing on the market of any specified “rice 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 rice product 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);
- (f) provide that the costs incurred in relation to Articles 2 and 4 of the Commission Decision are borne by the operators responsible for the first placing on the market (regulation 6); and
- (g) apply with modifications certain provisions of the Food Safety Act 1990 for the purposes of the Regulations (regulation 7).

A full regulatory impact assessment of the effect that these Regulations would have on business costs has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from The Food Standards Agency, 6th Floor, 88 St. Magnus House, 25 Guild Street, Aberdeen, AB11 6NJ.