

2004 No. 432

FOOD

The Genetically Modified Food (Scotland) Regulations 2004

Made - - - - *4th October 2004*

Laid before the Scottish Parliament *5th October 2004*

Coming into force - - *15th November 2004*

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(a), (e) and (f), 17(2), 18(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990(a), and of all other powers enabling them in that behalf, and having had regard in accordance with section 48(4A)(b) of that Act to relevant advice given by the Food Standards Agency, and after consultation in accordance with section 48(4) and (4B)(c) of that Act, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Genetically Modified Food (Scotland) Regulations 2004 and shall come into force on 15th November 2004.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations—

(a) “the Act” means the Food Safety Act 1990;

“the Community Regulation” means Regulation (EC) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed(d);

“food” has the same meaning as in the Act; and

“specified Community provision” means a provision of the Community Regulation specified in Column 1 and described in Column 2 of the Schedule to these Regulations; and

(b) any other expression used in these Regulations which is also used in the Community Regulation has the meaning given in the Community Regulation.

(a) 1990 c.16; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c.40), Schedule 9, paragraph 6 and by the Food Standards Act 1999 (c.28) (“the 1999 Act”), Schedule 5, paragraph 10(3); sections 16(1) and 48(1) were amended by the 1999 Act, Schedule 5, paragraph 8; section 17(1) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, Schedule 6; amendments made by Schedule 5 of the 1999 Act shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) (“the 1998 Act”) by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(c) Section 48(4B) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(d) O.J. No. L 268, 18.10.03, p.1.

Submission of applications for authorisation to market products

3. The national competent authority for the purposes of Chapter II of the Community Regulation shall be the Food Standards Agency.

Enforcement

4. It shall be the duty of each food authority to enforce and execute these Regulations and Chapter II of the Community Regulation within its area.

Offences and penalties

5.—(1) Any person who contravenes or fails to comply with any of the specified Community provisions referred to in Part I of the Schedule shall be guilty of an offence and liable—

- (a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or to both.

(2) Any person who contravenes or fails to comply with any of the specified Community provisions referred to in Part II of the Schedule shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

Application of various provisions of the Act

6.—(1) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in these sections to the Act or any Part thereof is deemed to be a reference to these Regulations and Chapter II of the Community Regulation:—

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 21 (defence of due diligence);
- (d) section 22 (defence of publication in the course of business);
- (e) section 29 (procurement of samples);
- (f) section 30(8) (documentary evidence);
- (g) section 32 (powers of entry);
- (h) section 33 (obstruction etc. of officers);
- (i) section 35(1) to (3) (punishment of offences) insofar as it relates to offences under section 33(1) and (2) as applied by paragraph (h);
- (j) section 36 (offences by bodies corporate);
- (k) section 36A (offences by Scottish partnerships); and
- (l) section 44 (protection of officers acting in good faith).

(2) Section 34 (time limit for prosecutions) shall apply to offences under regulation 5 as it applies to offences under section 35(2) of the Act, and—

- (a) a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient to warrant the proceedings came to the knowledge of the prosecutor shall be conclusive evidence of that fact;
- (b) a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(3) Section 8(3) of the Act shall apply for the purposes of these Regulations as if it read—

“(3) Where any food which fails to comply with a specified Community provision within the meaning of the Genetically Modified Food (Scotland) Regulations 2004 is part of a

batch, lot or consignment of food of the same class or description, it shall be presumed for the purposes of section 9 as applied by those Regulations until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with that specified Community provision.”.

(4) Section 9 of the Act (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if it read–

“9.—(1) An authorised officer of a food authority may at all reasonable times inspect any food for human consumption which–

- (a) has been placed on the market; or
- (b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of placing it on the market,

and subsections (2) to (11) shall apply where it appears to an authorised officer taking account of all information available to that officer that the placing on the market of any food fails to comply with a specified Community provision.

(2) The authorised officer may either–

- (a) give notice to the person in charge of the food that, until the notice is withdrawn, the food or any portion of it–
 - (i) is not to be used for human consumption; and
 - (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or
- (b) seize the food and remove it in order to have it dealt with by the sheriff,

and any person who knowingly contravenes the requirements of a notice under paragraph (a) shall be guilty of an offence.

(3) Where the authorised officer exercises the powers conferred by subsection (2)(a) that officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not that officer is satisfied that the food complies with the specified Community provisions and–

- (a) if the authorised officer is so satisfied, shall forthwith withdraw the notice; or
- (b) if the authorised officer is not so satisfied, shall seize the food and remove it in order to have it dealt with by the sheriff.

(4) Where an authorised officer exercises the powers conferred by subsection (2)(b) or (3)(b), the authorised officer shall inform the person in charge of the food of the intention to have it dealt with by the sheriff, and any person who might be liable to prosecution under the Genetically Modified Food (Scotland) Regulations 2004 (“the Regulations”) in respect of the food shall, if that person attends before the sheriff by whom the food falls to be dealt with, be entitled to be heard and to call witnesses.

(5) Subject to subsection (6), if it appears to the sheriff, on the basis of such evidence as the sheriff considers appropriate in the circumstances, that any food fails to comply with any of the specified Community provisions, the sheriff shall condemn the food and order it to be destroyed or to be so disposed of as to prevent it from being used for human consumption.

(6) Where the food is the subject of an authorisation issued under Section 1 of Chapter II of Regulation (EC) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed, and has been produced in accordance with any conditions relating to that authorisation but is not labelled as required by Article 13 of that Regulation, the sheriff may–

- (a) order the food to be so labelled within a period or periods specified by the sheriff; and

- (b) where it has not been so labelled within the period or periods specified, condemn the food and order it to be destroyed or so disposed of as to prevent it from being used for human consumption.

(7) Any expenses incurred in connection with the detention, labelling, destruction or disposal of the food pursuant to sub-sections (2), (5) or (6) shall be borne by the operator.

(8) If a notice under subsection (2)(a) is withdrawn, or the sheriff by whom any food falls to be dealt with under subsections (5) or (6) refuses to condemn it or to order it to be labelled in accordance with these subsections, the food authority shall compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

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

(10) Where the person in charge of the food has consented to receive a notice under sub-section (2)(a) by electronic communications to that person—

- (a) that notice may be served by sending it to that person by electronic communications; and
- (b) where such a notice has been so served, the service is deemed to have been effected by properly addressing and transmitting the notice.

(11) In this section “specified Community provision” has the same meaning as in the Regulations and “electronic communications” has the same meaning as in the Electronic Communications Act 2000(a).”.

Revocation

7. The Genetically Modified and Novel Foods (Labelling) (Scotland) Regulations 2000(b) are hereby revoked.

Amendments to the Novel Foods and Novel Food Ingredients Regulations 1997

8. In the Novel Foods and Novel Food Ingredients Regulations 1997(c)—

- (a) in regulation 2(1), in the definition of “Regulation (EC) No. 258/97”, after “ingredients” insert “, as amended by Regulation (EC) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed”; and
- (b) in the Schedule, after item 6 insert—
 - (i) in the first column “6A. Article 8.1”; and
 - (ii) in the second column—

“Requirement that labelling inform the final consumer of any characteristic or food property which renders a novel food or food ingredient no longer equivalent to an existing food or food ingredient.”.

TOM McCABE

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
4th October 2004

(a) 2000 c.7.

(b) S.S.I. 2000/83.

(c) S.I. 1997/1335, amended by S.I. 1999/1756 and 3182 and S.S.I. 2000/62 and 83.

SCHEDULE

Regulations 2 and 5

SPECIFIED COMMUNITY PROVISIONS

PART I

<i>Provision of the Community Regulation</i>	<i>Subject Matter</i>
Article 4.2	Prohibition on placing food on the market unless it is covered by an authorisation and satisfies relevant conditions of the authorisation.

PART II

<i>Provision of the Community Regulation</i>	<i>Subject Matter</i>
Article 8.6	Requirement that products in respect of which the Commission have adopted a measure under Article 8.6 shall be withdrawn from the market.
Article 9.1	Requirement that an authorisation holder and parties concerned must comply with any conditions or restrictions imposed on an authorisation for a product and with post-market monitoring requirements.
Article 9.3	Requirement that an authorisation holder inform the Commission of any new scientific or technical information relating to a product which might influence the evaluation of the safety in use of the food or of any prohibition or restriction on the food in a third country.
Article 13	Requirement for certain labelling indications.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, provide for the enforcement and execution of Chapter II of Regulation (EC) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed (O.J. No. L 268, 18.10.03, p.1) (“the Community Regulation”) which relates to food. The Genetically Modified Animal Feed (Scotland) Regulations 2004 (S.S.I. 2004/[]) make provision for the enforcement of those provisions of the Community Regulation relating to animal feed.

In particular the Regulations–

- (a) designate the Food Standards Agency as the national competent authority for receiving applications for the authorisation of new genetically modified organisms for food use, food containing or consisting of genetically modified organisms, or food produced from or containing ingredients produced from genetically modified organisms (regulation 3);
- (b) provide for food authorities to enforce the provisions of these Regulations and Chapter II of the Community Regulation (regulation 4);
- (c) establish penalties for failing to comply with certain specified provisions of the Community Regulation (regulation 5 and the Schedule);
- (d) apply various provisions of the Food Safety Act 1990 with some modifications in their application for the purposes of these Regulations (regulation 6);
- (e) revoke the Genetically Modified and Novel Foods (Labelling) (Scotland) Regulations 2000 (regulation 7); and
- (f) make consequential amendments to the Novel Foods and Novel Food Ingredients Regulations 1997 by inserting a provision in the Schedule (regulation 8).

A Regulatory Impact Assessment, which includes a compliance cost assessment of the effect which these Regulations would have on business costs, has been prepared and placed in the Scottish Parliament Information Centre. Copies may be obtained from the Food Standards Agency, 6th Floor, St Magnus House, 25 Guild Street, Aberdeen AB11 6NJ.

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