

2005 No. 246

AGRICULTURE

The Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (Scotland) Regulations 2005

<i>Made</i> - - - -	<i>4th May 2005</i>
<i>Laid before the Scottish Parliament</i>	<i>5th May 2005</i>
<i>Coming into force</i> - -	<i>6th May 2005</i>

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 Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (Scotland) Regulations 2005 and shall come into force on 6th May 2005.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Agriculture Act 1970(b);

“the Commission Decision” means Commission Decision 2005/317/EC on emergency measures regarding the non-authorised genetically modified organism Bt 10 in maize products(c);

“controlled products” means—

(a) corn gluten feed containing or produced from genetically modified maize within CN code 2309 90 20; and

(b) brewers grains containing or produced from genetically modified maize within CN code 2303 30 00,

originating from the United States of America; and

“feed” means feed as defined in Article 3.4 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

(a) 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). The functions conferred on a Minister of the Crown under section 2(2) of the 1972 Act, insofar as with devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(b) 1970 c.40.

(c) O.J. No. L 101, 21.4.05, p.14.

of food safety(a), as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council(b).

(2) Subject to paragraph (3) any expression used both in these Regulations and in the Act has the meaning it bears in the Act.

(3) Any expression used both in these Regulations and in the Commission Decision has the meaning it bears in the Commission Decision.

Prohibition on first placing on the market

3.—(1) No person shall first place on the market any controlled products unless the conditions specified in Article 2.1 or 2.2 of the Commission Decision relating to analytical reports are satisfied in relation to those products.

(2) Any person who 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 or to both.

Enforcement

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

(2) For the purposes of the exercise of the duty referred to in paragraph (1), an inspector of the authority concerned shall ensure that the requirements referred to in paragraph (3) are adhered to.

(3) The requirements are those specified in—

- (a) Article 3 of the Commission Decision (which is concerned with measures including the random sampling and analysis of controlled products which are already on the market, other than the requirement to supply the Commission with specified information); and
- (b) Article 4 of the Commission Decision (which is concerned with measures to be taken to ensure that controlled products that are found to contain Bt 10 maize or feed produced from Bt 10 maize are not placed on the market).

(4) Each enforcement 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 Act

5.—(1) The provisions of the Act listed in paragraph (2) shall apply for the purposes of these Regulations subject to the modifications set out in paragraphs (2)(a), (c) and (i) and as if—

- (a) any reference in those provisions to a feeding stuff were a reference to feed
- (b) any reference in those provisions to the Act or any Part of it were a reference to these Regulations;
- (c) any reference in those provisions to samples taken in a prescribed manner were a reference to samples taken in a manner prescribed in Part II of Schedule 1 to the Feeding Stuffs (Sampling and Analysis) Regulations 1999(c); and
- (d) any reference in those provisions to a prescribed manner of analysis were a reference to a method that is suitable and validated for the purposes of Article 2.1 of the Commission Decision.

(2) The provisions referred to in paragraph (1) are—

- (a) section 76 (inspector's power to enter premises and take samples), which shall apply as if subsection (2)(b) included power to require production of and to take copies of any documentation relating to the feed concerned;

(a) O.J. No. L 31, 1.2.02, p.1.

(b) O.J. No. L 245, 29.9.03, p.4.

(c) S.I. 1999/1663, amended by S.S.I. 2001/104, 2002/285 and 2003/277.

- (b) section 77 (division of samples and analysis by agricultural analyst);
- (c) section 78(2), (3), (4), (5), (6), (7), (8) and (10) (further analysis by the Government Chemist) with the modification that in paragraph (4) the reference to “of its own motion or” is omitted;
- (d) section 79(4), (5), (6), (7), (8) and (10) (supplementary provisions relating to samples and analysis);
- (e) section 80 (institution of prosecutions);
- (f) section 81 (offences due to fault of other person);
- (g) section 82 (defence of mistake, accident, etc.);
- (h) section 83 (exercise of powers by inspectors); and
- (i) section 110 (offences by bodies corporate) with the modification that a body corporate includes a partnership in Scotland and in relation to such a partnership, a reference to a director or other officer of a body corporate is a reference to a partner.

Application of various provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999

6.—(1) The provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999 listed in paragraph (2) shall apply for the purposes of these Regulations subject to the modifications set out in paragraphs (2)(b), (c), (d), (e), (f) and (h) and as if any reference in those provisions to a feeding stuff were a reference to feed.

(2) The provisions referred to in paragraph (1) are—

- (a) regulation 3(a) (manner of taking, preparing, marking, sealing and fastening of samples);
- (b) regulation 4 (methods of sending part of a sample) with the modification that the reference to “subsection (1)(b) or (2) of section 77 of the Act” shall be deemed to be a reference to these Regulations;
- (c) regulation 5 (qualifications of agricultural analysts and deputy agricultural analysts) with the modification that the reference to “The prescribed qualifications for an agricultural analyst or a deputy agricultural analyst for the purposes of section 67(5) of the Act, insofar as it relates to feeding stuffs” shall be deemed to be a reference to the qualifications required by a person analysing feed for the purposes of these Regulations;
- (d) regulation 6(4) (application of methods of analysis) with the modification that the reference to “the Act” shall be deemed to be a reference to these Regulations;
- (e) regulation 7 (form of certificate of analysis) with the modification that the reference to “section 77(4) of the Act” shall be deemed to be a reference to section 77(4) of the Act as applied for the purposes of these Regulations by regulation 5;
- (f) regulation 8 (period within which analysis of the oil content of a feeding stuff must be carried out) with the modification that the reference to “in the prescribed manner” shall be deemed to be a reference to a method that is suitable and validated for the purposes of Article 2.1 of the Commission Decision;
- (g) Schedule 1 (manner of taking, preparing, marking, sealing and fastening of samples); and
- (h) Schedule 3 (form of certificate of analysis) with the modification that the reference in Part I to “Part IV of the Agriculture Act 1970” shall be deemed to be a reference to these Regulations.

Inspection, seizure and detention of controlled products

7.—(1) An inspector of the relevant enforcement authority may at all reasonable times inspect any feed; and on such an inspection the inspector may, taking account of all the information available certify that the feed is a controlled product which does not comply with Article 2.

(2) Where any feed has been certified as mentioned in paragraph (1) it shall be treated for the purposes of regulation 8 of the Genetically Modified Animal Feed (Scotland) Regulations 2004(a) as failing to comply with a specified Community provision, with the modification that in that regulation—

- (i) in paragraph 3 the reference to 21 days is omitted; and
- (ii) in paragraph (4)(a) the reference to “these Regulations” shall be deemed to be a reference to Article 2.

Amendments to the Genetically Modified Animal Feed (Scotland) Regulations 2004

8.—(1) The Genetically Modified Animal Feed (Scotland) Regulations 2004 are amended in accordance with paragraph (2).

(2) In regulation 8 (inspection, seizure and detention of suspect animal feed)—

- (a) in paragraph (7) at the beginning insert “Subject to paragraphs (7A) and (7B)”, and
- (b) after paragraph (7) insert—

“(7A) When the material which is condemned pursuant to paragraph (5) is a controlled product the operator responsible for their first placing on the market shall pay to the enforcement authority on demand any costs incurred by the enforcement authority in connection with their destruction or disposal.

(7B) In paragraph (7A) “controlled product” has the meaning given to that expression in regulation 2(1) of the Feed (Corn Gluten Feed and Brewers Grains) (Emergency Control) (Scotland) Regulations 2005.”.

RHONA BRANKIN

Authorised to sign by the Scottish Ministers

St Andrew’s House,
Edinburgh
4th May 2005

(a) S.S.I. 2004/433.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, implement Commission Decision 2005/317/EC on emergency measures regarding the non-authorised genetically modified organism Bt 10 in maize products (O.J. No. L 101, 21.4.05, p.14) (“the Commission Decision”).

The Regulations—

- (a) prohibit the first placing on the market of certain maize products originating from the United States of America (defined as “controlled products” in regulation 2(1)) unless, as required by Article 2 of the Commission Decision, it can be demonstrated that the products do not contain Bt 10 maize or feed produced from Bt 10 maize (regulation 3(1));
- (b) make it an offence to breach that prohibition (regulation 3(2));
- (c) apply with modifications certain provisions of the Agriculture Act 1970 (c.40) for the purposes of the Regulations (regulation 5);
- (d) apply with modifications certain provisions of the Feeding Stuffs (Sampling and Analysis) Regulations 1999 (S.I. 1999/1663) for the purposes of the Regulations (regulation 6);
- (e) provide for the inspection, seizure and detention of controlled products (regulation 7); and
- (f) amend the Genetically Modified Animal Feed (Scotland) Regulations 2004 (S.S.I. 2004/433) to provide that where controlled products are condemned, the expenses incurred by the enforcement authority in connection with the destruction or disposal of those products shall be payable on demand by the operator responsible for their first placing on the market (regulation 8).

The CN codes referred to in the definition of “controlled 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.

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**The Feed (Corn Gluten Feed and Brewers Grains) (Emergency
Control) (Scotland) Regulations 2005**

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