Welsh Statutory Instrument 2002 No. 1798 (W.173)

The Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Wales) Regulations 2002

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STATUTORY INSTRUMENTS

2002 No. 1798 (W.173)

FOOD, WALES

AGRICULTURE, WALES

The Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Wales) Regulations 2002

Made	*11th July 2002*
Coming into force	*12th July 2002*

The National Assembly for Wales, being designated[1] for the purposes of section 2(2) of the European Communities Act 1972[2] in relation to the common agricultural policy of the European Community, acting in exercise of the powers conferred by that section, makes the following Regulations:

Title, commencement and extent

1. - (1) These Regulations may be cited as the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Wales) Regulations 2002 and shall come into force on 12th July 2002.

(2) These Regulations apply to Wales only.

Interpretation

2. - (1) In these Regulations -

"the Act" means the Food Safety Act 1990[3] 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;

"the Commission Decision" means Commission Decision 2002/69/EC concerning certain protective measures with regard to the products of animal origin imported from China[4], as amended by Commission Decision 2002/441/EC[5];

"food authority" does not include a port health authority;

"free circulation" has the same meaning as in Article 23.2, as read with Article 24, of the Treaty establishing the European Community;

"port health authority" means a port health authority for a port health district constituted under section 2(4) of the Public Health (Control of Disease) Act 1984[6];

"relevant product of animal origin" means a product of animal origin falling within either of the following descriptions -

(a) products of animal origin originating in, or consigned from, China, and intended for human consumption, or animal feed use, except for any such product which is of a kind to which the derogation contained in Article 2.2 of the Commission Decision (which is concerned with casings, certain fishery products and gelatine) applies; and

(b) products which contain any product falling within the description given in paragraph (a) of this definition.

(2) Any expression used both in these Regulations and in the Commission Decision has the same meaning in these Regulations as it bears in that Decision.

Prohibition of importation and offence

3. - (1) Subject to paragraph (2), no person shall import into Wales any relevant product of animal origin.

(2) Paragraph (1) shall not be taken to prohibit the import into Wales from a member State of any relevant product of animal origin which is in free circulation in that member State.

(3) 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 imprisonment for a term not exceeding three months.

Enforcement

4. - (1) Subject to paragraph (2), it shall be the duty of each port health authority to execute and enforce these Regulations within its district.

(2) In relation to any place which is not situated in the district of a port health authority these Regulations shall be executed and enforced by the food authority within whose area that place is situated.

(3) For the purposes of the exercise of the duty referred to in paragraph (1) or, as the case may be, (2) -

(a) the authority concerned shall exercise that duty in accordance with Article 4 of the Commission Decision (which is concerned with the levying of charges in respect of expenditure incurred in connection with the application of the Commission Decision);

(b) an authorised officer of the authority concerned shall -

(i) comply with Article 3.1 of the Commission Decision (which is concerned with the sampling and analysis of consignments of certain fishery products and of casings), and

(ii) have the same powers of entry as are bestowed on an authorised officer of an enforcement authority by section 32 of the Act for purposes connected with the Act or Regulations or Orders under the Act, and shall also have, in relation to any business producing material for animal feed use, the same power as an authorised officer of an enforcement authority has under that section in relation to a food business.

(4) A person on whom a charge is levied under paragraph (3)(a) shall pay it to the authority concerned on demand.

(5) Each port health authority and food authority shall give such assistance and information to the National Assembly for Wales and the Food Standards Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

Application of various provisions of the Act

5. - (1) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in them 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(1) (obstruction, etc. of officers);

(c) section 33(2), with the modification that the reference to "any such requirement as is mentioned in subsection (1)(b) above" shall be deemed to be a reference to any such requirement as is mentioned in section 33(1)(b) as applied by sub-paragraph (b);

(d) section 35(1) (punishment of offences), in so far as it relates to offences under section 33(1) as applied by sub-paragraph (b);

(e) section 35(2) and (3), in so far as it relates to offences under section 33(2) as applied by sub-paragraph (c);

(f) section 36 (offences by bodies corporate); and

(g) section 44 (protection of officers acting in good faith).

(2) Subject to paragraph (3), section 9 of the Act (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if it read as follows -

" **9.** - (1) An authorised officer of a food authority or a port health authority may at all reasonable times inspect any relevant product of animal origin which -

(a) has been sold or is offered or exposed for sale; or

(b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale.

(2) Subsections (3) to (8) shall apply where, whether or not on an inspection carried out under subsection (1), it appears to an authorised officer of a food authority or a port health authority that any relevant product of animal origin has been imported into Wales in contravention of regulation 3(1) of the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Wales) Regulations 2002.

(3) The authorised officer may either -

(a) give notice to the person in charge of the product that, until the notice is withdrawn, the product or any specified portion of it -

(i) is not to be used for human consumption or, as the case may be, put to animal feed use, 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 product and remove it in order to have it dealt with by a justice of the peace;

and any person who knowingly contravenes the requirements of a notice under paragraph (a) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where the authorised officer exercises the powers conferred by subsection (3) (a) above, he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that the product has not been imported in contravention of regulation 3(1) of the above Regulations and -

(a) if he is so satisfied, shall forthwith withdraw the notice;

(b) if he is not so satisfied, shall seize the product and remove it in order to have it dealt with by a justice of the peace.

(5) Where an authorised officer exercises the powers conferred by subsection (3) (b) or (4)(b) above, he shall inform the person in charge of the product of his intention to have it dealt with by a justice of the peace and -

(a) any person who under regulation 3(3) of the above Regulations above might be liable to a prosecution in respect of the product shall, if he attends before the justice of the peace by whom the product falls to be dealt with, be entitled to be heard and to call witnesses; and

(b) that justice of the peace may, but need not, be a member of the court before which any person is proceeded against for an offence consisting of a

contravention of regulation 3(1) of those Regulations in relation to that product.

(6) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any product falling to be dealt with by him under this section has been imported in contravention of regulation 3(1) of the above Regulations, he shall condemn the product and order -

(a) the product to be destroyed or to be so disposed of as to prevent it from being used for human consumption or, as the case may be, put to animal feed use; and

(b) any expenses reasonably incurred in connection with the destruction or disposal to be charged to the consignor, consignee or agent of the product under Article 4 of the Commission Decision.

(7) If a notice under subsection (3)(a) above is withdrawn, or the justice of the peace by whom any product falls to be dealt with under this section refuses to condemn it, the food authority or, as the case may be, port health authority, shall compensate the owner of the product for any depreciation in its 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 subsection (7) above shall be determined by arbitration.".

(3) The expressions "authorised officer", "food authority", "port health authority", "relevant product of animal origin", "for human consumption" and "animal feed use", which are used in section 9 of the Act so far as it applies for the purposes of these Regulations by virtue of paragraph (2), shall, for those purposes, bear the meanings that those expressions respectively bear in these Regulations.

(4) Section 2 of the Act (extended meaning of "sale" etc) shall apply in relation to section 9 of the Act so far as it applies for the purposes of these Regulations by virtue of paragraph (2).

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

(a) for the words "an enforcement authority" there shall be substituted the words "a food authority or as the case may be a port health authority";

(b) for subsection (b)(ii) there shall be substituted the following provision -

" (ii) is found by him on or in any premises which he is authorised to enter in pursuance of regulation 4(3)(b)(ii) of the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Wales) Regulations 2002;";

(c) subsection (c) shall be omitted; and

(d) for the words "any of the provisions of this Act or of Regulations or Orders made under it" in subsection (d) there shall be substituted the words "the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Wales)

Regulations 2002".

(6) An authorised officer of a food authority or a port health authority who has procured a sample under section 29 of the Act as applied for the purposes of these Regulations by paragraph (5), shall, if he considers that the sample should be analysed, submit it for analysis at a laboratory having facilities which are adequate for the purpose of enabling the chemical tests required by Article 3.1 of the Commission Decision to be carried out there.

(7) A sample submitted pursuant to paragraph (6) shall be analysed as soon as practicable by an analyst at the laboratory to which it is submitted.

(8) An analyst who analyses a sample in accordance with paragraph (7) may demand in advance the payment of such reasonable fee as he may require.

(9) An analyst who has analysed a sample in accordance with paragraph (7) shall give to the person by whom it was submitted a certificate specifying the result of the analysis.

(10) A certificate given by an analyst under paragraph (9) shall be signed by him, but the analysis may be made by any person acting under his direction.

(11) In any proceedings under these Regulations, the production by one of the parties of -

(a) a document purporting to be a certificate given by an analyst under paragraph (9); or

(b) a document supplied by him to the other party as being a copy of such a certificate,

shall be sufficient evidence of the facts stated in it unless, in a case falling within sub-paragraph (a), the other party requires that the analyst shall be called as a witness.

(12) Where a sample procured under section 29 of the Act as applied for the purposes of these Regulations by paragraph (5) has been analysed in accordance with paragraph (7), the owner shall be entitled on request to be supplied with a copy of the certificate of analysis by the authority which, by virtue of regulation 4(1) or (2), has the duty of enforcing them.

Revocation of the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Control) (Wales) Regulations 2002

6. The Food and Animal Feedingstuffs (Products of Animal Origin from China) (Control) (Wales) Regulations 2002[7] are revoked.

Signed on behalf of the National Assembly for Wales under s.66(1) of the Government of Wales Act 1998[8].

D. Elis-Thomas
The Presiding Officer of the National Assembly

11th July 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Wales only, revoke and re-enact with changes the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Control) (Wales) Regulations 2002. The revocation is effected by regulation 6.

These Regulations implement Commission Decision 2002/69/EC concerning certain protective measures with regard to the products of animal origin imported from China (OJ No. L30, 31.1.2002, p.50) as amended by Commission Decision 2002/441/EC (OJ No. L151,11.6.2002, p.16).

These Regulations define "relevant product of animal origin" (*regulation 2*); prohibit (with exceptions which are specified in that definition) their importation (*regulation 3*); specify the enforcement authorities (*regulation 4*) and apply with modifications, for the purposes of the Regulations, certain provisions of the Food Safety Act 1990 (*regulation 5*).

The principal changes effected by these Regulations are that -

(a) the exceptions referred to above are modified as regards the types of products to which, and the circumstances in which, they apply; and

(b) a specific obligation is imposed on the consignor or consignee of any product subject to the Regulations or his or her agent to reimburse the relevant enforcement authority on demand in relation to the costs it incurs in relation to that product in complying with Commission Decision 2002/69/EC as amended.

No regulatory appraisal has been prepared in respect of these Regulations.

Notes:

[1] By virtue of the European Communities (Designation)(No. 3) Order 1999 (S.I. 1999 No. 2788).back

[2] 1972 c.68.back

[3] 1990 c.16.back

[4] OJ No. L30, 31.1.2002, p.50.back

[5] OJ No. L151, 11.6.2002, p.16.back

[6] 1984 c.22.back

[7] S.I. 2002 No. 203 (W.26).back

[8] 1998 c.38.back

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