

Scottish Statutory Instrument 2002 No. 300

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

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SCOTTISH STATUTORY INSTRUMENTS

2002 No. 300

FOOD

AGRICULTURE

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

<i>Made</i>	<i>19th June 2002</i>
<i>Laid before the Scottish Parliament</i>	<i>24th June 2002</i>
<i>Coming into force</i>	<i>20th June 2002</i>

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972[1] 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 and Animal Feedingstuffs

(Products of Animal Origin from China) (Emergency Control) (Scotland) Regulations 2002 and shall come into force on 20th June 2002.

(2) These Regulations extend to Scotland only.

Interpretation

2. - (1) In these Regulations-

"the Act" means the Food Safety Act 1990[2] and, save where otherwise indicated 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[3] as amended by Commission Decision 2002/441/EC[4];

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

"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 for 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; or

(b) products which contain any product of animal origin 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 the Commission Decision.

Prohibition of importation and offence

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

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

(a) from another member State of the European Community of any relevant product of animal origin which is in free circulation in that member State; and

(b) from England, Wales or Northern Ireland of any relevant product of animal origin which has been imported into the United Kingdom in accordance with the Commission Decision.

(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) 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)-

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

(b) an authorised officer of the food authority 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);

(ii) be subject to the same obligations as regards the handling of samples procured under the Act as applied by regulation 5(5) as are imposed on an authorised officer of an enforcement authority by regulations 6 to 8 of the Food Safety (Sampling and Qualifications) Regulations 1990[5]; and

(iii) 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 under that section in relation to a food business.

(3) A person on whom a charge is levied under paragraph (2)(a) shall pay it to the food authority on demand.

(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 Act

5. - (1) The following provisions of the Act shall apply for the purposes of these Regulations and 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 30 (analysis etc. of samples), with the further modifications that-

(i) the reference to "section 29 above" in subsection (1) shall be deemed to be a reference to that section as applied by regulation 5(5); and

(ii) in the definition of "sample" in subsection (9), the reference to "regulations under section 31 below" shall be deemed to be a reference to regulation 4(2)(b)(ii);

(c) section 33 (obstruction etc. of officers);

(d) section 35(1) to (3) (punishment of offences) in so far as it relates to offences under section 33 as applied by this paragraph;

- (e) section 36 (offences by bodies corporate);**
- (f) section 36(A) (offences by Scottish partnerships); 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 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 that any relevant product of animal origin has been imported into Scotland in contravention of regulation 3(1) of the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Scotland) 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 sheriff,
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, 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 product has not been imported in contravention of regulation 3(1) of the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Scotland) Regulations 2002 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 product and**

remove it in order to have it dealt with by a sheriff.

(5) Where an authorised officer exercises the powers conferred by subsection (3)(b) or (4)(b) above, the authorised officer shall inform the person in charge of the product of the intention to have it dealt with by a sheriff and any person who under regulation 3(3) of the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Scotland) Regulations 2002 might be liable to a prosecution in respect of the product shall, if that person attends before the sheriff by whom the product falls to be dealt with, be entitled to be heard and to call witnesses.

(6) If it appears to the sheriff, on the basis of such evidence as the sheriff considers appropriate in the circumstances, that any product falling to be dealt with under this section has been imported in contravention of regulation 3(1) of the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Scotland) Regulations 2002, the sheriff 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 consigner, 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 sheriff by whom any product falls to be dealt with under this section refuses to condemn it, the food 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 a single arbiter appointed, failing agreement between the parties, by the sheriff."

(3) The expression "relevant product of animal origin" used in the application of section 9 of the Act for the purposes of these Regulations which is effected by paragraph (2), shall, for those purposes, bear the meaning that that expression bears in these Regulations.

(4) Section 2 of the Act (extended meaning of "sale" etc.) shall apply in relation to section 9 of the Act in so far as the latter section applies for the purpose 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 "an enforcement authority" there shall be substituted "a food authority";

(b) for subsection (b)(ii) there shall be substituted-

" (ii) is found by the authorised officer on or in any premises which

the authorised officer is authorised to enter in pursuance of regulation 4(2)(b)(iii) of the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Scotland) Regulations 2002;";

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

(d) in subsection (d) for "any of the provisions of this Act or of regulations or orders made under it" there shall be substituted "the Food and Animal Feedingstuffs) (Products of Animal Origin from China) (Emergency Control) (Scotland) Regulations 2002".

(6) Regulation 9(1) of the Food Safety (Sampling and Qualifications) Regulations 1990 shall apply for the purposes of these Regulations as if it read as follows:-

" (1) Where a sample procured under section 29 of the Act as applied by regulation 5(5) of the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Emergency Control) (Scotland) Regulations 2002 has been analysed or examined pursuant to regulation 4(2)(b) of those Regulations, the owner shall be entitled on request to be supplied with a copy of the certificate of analysis or examination by the authority which, by virtue of regulation 4(1) of those Regulations, has the duty of enforcing them."

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

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

MARY MULLIGAN

Authorised to sign by the Scottish Ministers

St Andrew's House, Edinburgh

19th June 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, revoke and re enact with changes the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Control) (Scotland) Regulations 2002. They implement Commission Decision 2002/441/EC amending Decision 2002/69/EC concerning certain protective measures with regard to the products of animal origin imported from China.

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

The principal changes to the revoked 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 consignors or consignees of any product subject to the Regulations to reimburse the food authority on demand in relation to costs it incurs in complying with Commission Decision 2002/69/EC (as amended by Commission Decision 2002/441/EC) in relation to that product.

No Regulatory Impact Assessment has been prepared in respect of these Regulations.

Notes:

[1] 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46), Schedule 8, paragraph 15(3). The functions conferred upon a Minister of the Crown under section 2(2) of the 1972 Act, insofar as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998.back

[2] 1990 c.16.back

[3] O.J. No. L 30, 31.1.02, p.50.back

[4] O.J. No. L 151, 11.6.02, p.16.back

[5] S.I. 1990/2463, to which there are amendments not relevant to these Regulations.back

[6] S.S.I. 2002/36.back

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