

2005 No. 294

FOOD

**The Food (Chilli, Chilli Products, Curcuma and Palm Oil)
(Emergency Control) (Scotland) Regulations 2005**

<i>Made</i> - - - -	<i>1st June 2005</i>
<i>Laid before the Scottish Parliament</i>	<i>1st June 2005</i>
<i>Coming into force</i> - -	<i>2nd June 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 Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (Scotland) Regulations 2005 and come into force on 2nd June 2005.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990(b) and, subject to paragraph (2), any expression used both in these Regulations and in the Act has the meaning it bears in the Act;

“chilli” means fruits of the genus *Capsicum*, dried and crushed or ground within CN Code 09042090, in whatever form, intended for human consumption;

“chilli products” means curry powder within CN Code 091050, in whatever form, intended for human consumption;

“the Commission Decision” means Commission Decision 2005/402/EC on emergency measures regarding chilli, chilli products, curcuma and palm oil(c);

“curcuma” means curcuma, dried and crushed or ground within CN Code 091030, in whatever form, intended for human consumption;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(d);

(a) 1972 c.68 (“the 1972 Act”). Section 2(2) was amended by the Scotland Act 1998 (“the 1998 Act”), Schedule 8, paragraph 15(2). 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. Insofar as not so transferred, 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).

(b) 1990 c.16; section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990.

(c) O.J. No. L 135, 28.5.05, p.34.

(d) 1994 c.39.

“palm oil” means palm oil within CN Code 15111090, intended for direct human consumption; and

“prohibited substance” means any of the following chemical substances:–

- (i) Sudan I (CAS Number 842-07-9);
- (ii) Sudan II (CAS Number 3118-97-6);
- (iii) Sudan III (CAS Number 85-86-9); or
- (iv) Scarlet Red or Sudan IV (CAS Number 85-83-6).

(2) Any term used in the definitions of “chilli”, “chilli products”, “curcuma” and “palm oil” in paragraph (1) has the same meaning as in the Commission Decision.

Prohibition on import

3.—(1) Subject to paragraph (2), no person shall import into Scotland any chilli, chilli products, curcuma or palm oil unless–

- (a) the conditions specified in Articles 2.1 (as read with Article 7.2), 2.2 (as read with Article 7.1), 2.4 and 4 of the Commission Decision are satisfied in relation to those products; and
- (b) where these products are the subject of sampling and analysis by an authorised officer of a local authority under regulation 5(3)(c) they are found not to contain any prohibited substance.

(2) Nothing in paragraph (1) shall be taken to prohibit the bringing into Scotland–

- (a) from a member State of any chilli, chilli products, curcuma or palm oil which are in free circulation within the meaning of Article 23.2, as read with Article 24 of the Treaty establishing the European Community, in that State; or
- (b) from England, Wales or Northern Ireland of chilli, chilli products, curcuma or palm oil which have been imported into the United Kingdom in accordance with the Commission Decision.

(3) Any person who knowingly contravenes paragraph (1)(a) 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.

Prohibition on placing on the market

4.—(1) No person shall place on the market any chilli, chilli product, curcuma or palm oil which contains any prohibited substance.

(2) Any person who knowingly contravenes paragraph (1) shall be guilty of an offence and liable on summary conviction a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months.

Enforcement

5.—(1) It shall be the duty of each local authority to execute and enforce these Regulations within its area.

(2) An authorised officer of the local authority shall–

- (a) ensure that the requirements referred to in paragraph (3) are adhered to; and
- (b) have the same powers of entry as an authorised officer of an enforcement authority under section 32 of the Act for purposes connected with the Act or Regulations or Orders made under the Act.

(3) The requirements are those specified in–

- (a) Article 2.3 of the Commission Decision (which is concerned with documentary checks relating to consignments of chilli, chilli products, curcuma and palm oil);

- (b) Article 2.4 of the Commission Decision insofar as requiring the detention under official supervision of products awaiting the results of sampling and analysis by the importer;
- (c) Article 3 of the Commission Decision (which is concerned with the sampling and analysis of such consignments and of chilli, chilli products, curcuma and palm oil already placed on the market) other than the requirement to supply the Commission with specified information; and
- (d) Article 4 of the Commission Decision (which is concerned with the case where consignments are split).

(4) Each local 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 Food Safety Act 1990 and sampling and analysis

6.—(1) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that 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 33 (obstruction etc. of officers);
- (c) section 35(1) to (3) (punishment of offences)(a), in so far as it relates to offences under section 33(1) and (2) as applied by sub-paragraph (b);
- (d) section 36 (offences by bodies corporate);
- (e) section 36A(offences by Scottish partnerships)(b); and
- (f) section 44 (protection of officers acting in good faith).

(2) 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 local authority”;
- (b) for subsection (b)(ii) there shall be substituted—
 - “(ii) is found by the authorised officer at any premises which that officer is authorised to enter by virtue of regulation 5(2)(b) of the Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (Scotland) Regulations 2005;”;
- (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 (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (Scotland) Regulations 2005”.

(3) Section 30 (analysis etc. of samples) shall apply for the purposes of these Regulations with the modification that in subsection (1) for “An authorised officer of an enforcement authority who has procured a sample under section 29 above” there shall be substituted—

“An authorised officer of a local authority who has procured a sample under section 29 above as applied for the purposes of the Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (Scotland) Regulations 2005 by regulation 6(2) thereof”.

(4) Where a sample procured under section 29 of the Act as applied for the purposes of these Regulations by paragraph (2) has been analysed in accordance with the provisions of section 30 of the Act as applied by paragraph (3), the owner shall be entitled on request to be supplied with a copy of the certificate of analysis by the local authority.

(a) Section 35(3) was amended by S.I. 2004/3279.

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

Destruction of illegal chilli, chilli products, curcuma or palm oil

7.—(1) If on an inspection or examination of any chilli, chilli products, curcuma or palm oil it appears to an authorised officer of a local authority that they contravene the conditions of import contained in regulation 3(1) or have been placed on the market in contravention of regulation 4(1) that officer shall after appropriate consultation with a person appearing to be the importer or food business operator responsible for the product, serve on that person a notice ordering the destruction of the chilli, chilli products, curcuma or palm oil within such reasonable period (not less than 7 days from the date on which the notice was served exclusive of Saturdays, Sundays and public holidays) as shall be specified in the notice.

(2) Any notice served under paragraph (1) shall state—

- (a) the right of appeal to the sheriff under paragraph (4); and
- (b) the period within which such an appeal may be brought.

(3) The person appearing to be the importer of or food business operator responsible for chilli, chilli products, curcuma and palm oil in respect of which a notice has been served under paragraph (1) shall ensure that they are stored until destruction under the supervision of the authorised officer at such place and under such conditions as the authorised officer may in the notice direct.

(4) Any person who is aggrieved by a decision of an authorised officer to serve a notice under paragraph (1) may appeal to the sheriff who may confirm or cancel the notice.

(5) The period within which such an appeal as is mentioned in paragraph (4) may be brought shall be 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and public holidays.

(6) Pending determination of an appeal under paragraph (4), paragraph (3) shall apply to the storage of the chilli, chilli products, curcuma or palm oil concerned.

(7) If the sheriff allows an appeal brought under paragraph (4) the authority concerned shall compensate the owner of the chilli, chilli products, curcuma or palm oil concerned for any depreciation in their 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 paragraph (7) shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(9) Any person who breaches the terms of a notice served under 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.

Costs of analysis, storage and destruction

8. The importer or food business operator responsible for the chilli, chilli products, curcuma or palm oil concerned shall pay on demand to the local authority any costs incurred by the local authority in respect of the analysis, storage or destruction of any product pursuant to these Regulations.

Revocation

9. The Food (Chilli and Chilli Products) (Emergency Control) (Scotland) Regulations 2004^(a) are hereby revoked.

St Andrew's House,
Edinburgh
1st June 2005

RHONA BRANKIN
Authorised to sign by the Scottish Ministers

(a) S.S.I. 2004/56.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, implement Commission Decision 2005/402/EC on emergency measures regarding chilli, chilli products, curcuma and palm oil (O.J. No. L 135, 28.5.05, p.34) (“the new Decision”). The new Decision repealed Commission Decision 2004/92/EC on emergency measures regarding chilli and chilli products (O.J. No. L 27, 30.1.04, p.52). These Regulations replace the Food (Chilli and Chilli Products) (Emergency Control) (Scotland) Regulations 2004 (S.S.I. 2004/59) which implemented Commission Decision 2004/92/EC.

The differences between the new Decision and Commission Decision 2004/92/EC are that–

- (a) the new Decision extends the emergency measures to apply to curcuma and palm oil in addition to dried and crushed or ground chillies and curry powder; and
- (b) the new Decision requires that the analytical report accompanying the consignment must be endorsed by a representative of the relevant competent authority.

The Regulations–

- (a) prohibit the importation of chilli, chilli products, curcuma and palm oil except where they are accompanied by an analytical report endorsed by a representative of the relevant competent authority, demonstrating that the product does not contain any of the prohibited substances Sudan I, Sudan II, Sudan III, Scarlet Red or Sudan IV (regulation 3);
- (b) prohibit the placing on the market of chilli, chilli products, curcuma or palm oil which contain a prohibited substance (regulation 4);
- (c) provide for their enforcement (regulation 5);
- (d) apply with modifications certain provisions of the Food Safety Act 1990 for the purposes of the Regulations and provide for sampling and analysis (regulation 6);
- (e) provide for the destruction of chilli, chilli products, curcuma and palm oil which contravene the conditions of import or are illegally placed on the market (regulation 7);
- (f) make provision as to the payment of the cost of analysis, storage and destruction of products incurred by the local authority under the Regulations (regulation 8); and
- (g) revoke the Food (Chilli and Chilli Products) (Emergency Control) (Scotland) Regulations 2004 (regulation 9).

The CN codes referred to in the definitions of “chilli”, “chilli products”, “curcuma” and “palm oil” are the code numbers of the combined nomenclature established by Regulation (EEC) No. 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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