Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (Scotland) Regulations 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCOTTISH STATUTORY INSTRUMENTS

2005 No. 294

FOOD

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

Made - - - -	*1st June 2005*
Laid before the Scottish Parliament - - - -	*1st June 2005*
Coming into force - -	*2nd June 2005*

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 (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.

Commencement Information

I1 Reg. 1 in force at 2.6.2005, see **reg. 1(1)**

Interpretation

2.—(1) In these Regulations–

"the Act" means the Food Safety Act 1990(**2**) 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;

(**1**) 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).

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

"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(**3**);

"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(**4**);

"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.

Commencement Information

I2 Reg. 2 in force at 2.6.2005, see **reg. 1(1)**

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.

(**3**) O.J. No. L 135, 28.5.05, p.34.
(**4**) 1994 c. 39.

Commencement Information
I3 Reg. 3 in force at 2.6.2005, see **reg. 1(1)**

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.

Commencement Information
I4 Reg. 4 in force at 2.6.2005, see **reg. 1(1)**

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.

Commencement Information
I5 Reg. 5 in force at 2.6.2005, see **reg. 1(1)**

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)(**5**), 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)(**6**); 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.

Commencement Information

I6 Reg. 6 in force at 2.6.2005, see **reg. 1(1)**

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

(**5**) Section 35(3) was amended by S.I. 2004/3279.
(**6**) Section 36A was inserted by the Food Standards Act 1999, c. 28, Schedule 5, paragraph 16.