SCOTTISH STATUTORY INSTRUMENTS

2004 No. 432

FOOD

The Genetically Modified Food (Scotland) Regulations 2004

Made - - - -	*4th October 2004*
Laid before the Scottish Parliament - - - -	*5th October 2004*
Coming into force - -	*15th November 2004*

The Scottish Ministers, in exercise of the powers conferred by sections 6(4), 16(1)(a), (e) and (f), 17(2), 18(1), 26(1) and (3) and 48(1) of the Food Safety Act 1990(**1**), and of all other powers enabling them in that behalf, and having had regard in accordance with section 48(4A)(**2**) of that Act to relevant advice given by the Food Standards Agency, and after consultation in accordance with section 48(4) and (4B)(**3**) of that Act, hereby make the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Genetically Modified Food (Scotland) Regulations 2004 and shall come into force on 15th November 2004.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations–

(a) "the Act" means the Food Safety Act 1990;

"the Community Regulation" means Regulation (EC) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed(**4**);

"food" has the same meaning as in the Act; and

(**1**) 1990 c. 16; section 6(4) was amended by the Deregulation and Contracting Out Act 1994 (c. 40), Schedule 9, paragraph 6 and by the Food Standards Act 1999 (c. 28) ("the 1999 Act"), Schedule 5, paragraph 10(3); sections 16(1) and 48(1) were amended by the 1999 Act, Schedule 5, paragraph 8; section 17(1) was amended by the 1999 Act, Schedule 5, paragraphs 8 and 12; section 26(3) was amended by the 1999 Act, Schedule 6; amendments made by Schedule 5 of the 1999 Act shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c. 46) ("the 1998 Act") by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.

(**2**) Section 48(4A) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(**3**) Section 48(4B) was inserted by paragraph 21 of Schedule 5 to the 1999 Act.

(**4**) O.J. No. L 268, 18.10.03, p.1.

"specified Community provision" means a provision of the Community Regulation specified in Column 1 and described in Column 2 of the Schedule to these Regulations; and

(b) any other expression used in these Regulations which is also used in the Community Regulation has the meaning given in the Community Regulation.

Submission of applications for authorisation to market products

3. The national competent authority for the purposes of Chapter II of the Community Regulation shall be the Food Standards Agency.

Enforcement

4. It shall be the duty of each food authority to enforce and execute these Regulations and Chapter II of the Community Regulation within its area.

Offences and penalties

5.—(1) Any person who contravenes or fails to comply with any of the specified Community provisions referred to in Part I of the Schedule shall be guilty of an offence and liable–

(a) on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or

(b) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine, or to both.

(2) Any person who contravenes or fails to comply with any of the specified Community provisions referred to in Part II of the Schedule shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or to both.

Application of various provisions of the Act

6.—(1) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in these sections to the Act or any Part thereof is deemed to be a reference to these Regulations and Chapter II of the Community Regulation:–

(a) section 3 (presumptions that food intended for human consumption);

(b) section 20 (offences due to fault of another person);

(c) section 21 (defence of due diligence);

(d) section 22 (defence of publication in the course of business);

(e) section 29 (procurement of samples);

(f) section 30(8) (documentary evidence);

(g) section 32 (powers of entry);

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

(i) section 35(1) to (3) (punishment of offences) insofar as it relates to offences under section 33(1) and (2) as applied by paragraph (h);

(j) section 36 (offences by bodies corporate);

(k) section 36A (offences by Scottish partnerships); and

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

(2) Section 34 (time limit for prosecutions) shall apply to offences under regulation 5 as it applies to offences under section 35(2) of the Act, and–

(a) a certificate signed by or on behalf of the prosecutor and stating the date on which evidence sufficient to warrant the proceedings came to the knowledge of the prosecutor shall be conclusive evidence of that fact;

(b) a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(3) Section 8(3) of the Act shall apply for the purposes of these Regulations as if it read–

"(3) Where any food which fails to comply with a specified Community provision within the meaning of the Genetically Modified Food (Scotland) Regulations 2004 is part of a batch, lot or consignment of food of the same class or description, it shall be presumed for the purposes of section 9 as applied by those Regulations until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with that specified Community provision.".

(4) Section 9 of the Act (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if it read–

"**9.**—(1) An authorised officer of a food authority may at all reasonable times inspect any food for human consumption which–

(a) has been placed on the market; or

(b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of placing it on the market,

and subsections (2) to (11) shall apply where it appears to an authorised officer taking account of all information available to that officer that the placing on the market of any food fails to comply with a specified Community provision.

(2) The authorised officer may either–

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

(i) is not to be used for human consumption; 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 food and remove it in order to have it dealt with by the sheriff,

and any person who knowingly contravenes the requirements of a notice under paragraph (a) shall be guilty of an offence.

(3) Where the authorised officer exercises the powers conferred by subsection (2)(a) 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 food complies with the specified Community provisions 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 food and remove it in order to have it dealt with by the sheriff.

(4) Where an authorised officer exercises the powers conferred by subsection (2)(b) or (3)(b), the authorised officer shall inform the person in charge of the food of the intention to have it dealt with by the sheriff, and any person who might be liable to prosecution under the Genetically Modified Food (Scotland) Regulations 2004 ("the Regulations") in respect of the food shall, if that person attends before the sheriff by whom the food falls to be dealt with, be entitled to be heard and to call witnesses.

(5) Subject to subsection (6), if it appears to the sheriff, on the basis of such evidence as the sheriff considers appropriate in the circumstances, that any food fails to comply with any