WELSH STATUTORY INSTRUMENTS

2004 No. 3220 (W.276)

FOOD, WALES

The Genetically Modified Food (Wales) Regulations 2004

Made - - - -	*7 December 2004*
Coming into force - -	*17 December 2004*

The National Assembly for Wales in exercise of the powers, conferred by sections 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 now vested in it(**2**), and having had regard in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency, and after consultation both as required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (**3**) and in accordance with section 48(4) and (4B) of that Act, makes the following Regulations:

Title, commencement and application

1. These Regulations —

(a) may be cited as the Genetically Modified Food (Wales) Regulations 2004;

(b) come into force on 17 December 2004; and

(c) apply to Wales only.

Interpretation

2.—(1) In these Regulations —

"the Act" ("*y Ddeddf*") means the Food Safety Act 1990;

"food authority" ("*awdurdod bwyd*") has the same meaning as in section 5(1A) and (3)(a) and (b) of the Food Safety Act 1990.

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

(**1**) 1990 c. 16.
(**2**) Functions of the Secretary of State under the Food Safety Act 1990, so far as exercisable in relation to Wales were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672).
(**3**) OJ No. L31, 1.2.2002, p.1.
(**4**) OJ No. L268, 18.10.03, p1.

"specified Community provision" ("*darpariaeth benodedig y Gymuned*") means a provision of Regulation 1829/2003 specified in Column 1 and described in Column 2 of the Schedule to these Regulations.

(2) In these Regulations —

(a) any reference to a numbered article is a reference to the article so numbered in Regulation 1829/2003;

(b) any reference to a numbered regulation is a reference to the regulation so numbered in these Regulations;

(c) any reference to a Schedule is a reference to the Schedule to these Regulations

(3) Other expressions used in these Regulations and in Regulation 1829/2003 have the same meaning in these Regulations as in Regulation 1829/2003.

Submission of applications for authorisation to market products

3. The national competent authority for the purposes of Chapter II of Regulation 1829/2003 is the Food Standards Agency(**5**).

Enforcement

4. Each food authority, within its area is to enforce and execute the provisions of these Regulations and Chapter II of Regulation 1829/2003.

Offences and Penalties

5.—(1) Any person who contravenes or fails to comply with the specified Community provision referred to in Part I of the Schedule is 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

(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 is 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 apply for the purposes of these Regulations and Regulation 1829/2003 as they apply for the purposes of the Act —

(a) Section 3 (presumption that food is intended for human consumption);

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

(c) Section 21 (defence of due diligence) as it applies for the purposes of sections 8, 14 or 15 of that Act;

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

(e) Section 30(8) (which relates to documentary evidence);

(f) Section 33(1) (obstruction, etc of officers);

(**5**) Whose address in Wales is 11th Floor Southgate House, Wood Street, Cardiff CF10 1EW.

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

(h) Section 35(1) (punishment of offences) insofar as it relates to offences under section 33(1) as applied by sub-paragraph (f);

(i) Section 35(2) and (3) insofar as it relates to offences under section 33(2) as applied by sub-paragraph (g);

(j) Section 36 (offences by bodies corporate); and

(k) Section 44 (protection of officers acting in good faith); and

(1) Section 50 (service of documents).

(2) Section 34 (time limit for prosecutions) applies to offences under regulation 5 as it applies to offences punishable under section 35(2) of the Act.

Inspection, detention and seizure of suspected food

7.—(1) Section 8(3) of the Act applies for the purposes of these Regulations as if it read as follows —

"(3) Where any food which fails to comply with a specified Community provision within the meaning of the Genetically Modified Food (Wales) Regulations 2004 is part of a batch, lot or consignment of food of the same class or description, it is to 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."

(2) Section 9 of the Act applies 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 food intended for human consumption which —

(a) has been placed on the market; or

(b) is in 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 (9) below apply where it appears to the authorised officer, taking account of all the information available to him, 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 specified 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 a justice of the peace;

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

(3) Where the authorised officer exercises the powers conferred by subsection (2)(a) above, he or she is, as soon as is reasonably practicable and in any event within 21 days, to determine whether or not he or she is satisfied that the food complies with the specified Community provisions and —

(a) if he or she is so satisfied is to forthwith withdraw the notice;