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SCOTTISH STATUTORY INSTRUMENTS

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**2004 No.**

**FOOD**

**The Genetically Modified Food (Scotland) Regulations 2004**

<i>Made</i>	- - - -	2004
<i>Laid before the Scottish Parliament</i>		2004
<i>Coming into force</i>	- -	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(a), and having had regard in accordance with section 48(4A)(b) of that Act to relevant advice given by the Food Standards Agency, and after consultation in accordance with section 48(4) and (4B)(c) 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 2004.
- (2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations—

- (a) “the Act” means the Food Safety Act 1990;
- “the Council Regulation” means Regulation (EC) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed(d); and
- “specified Community provision” means a provision of the Council Regulation specified in Column 1 and described in Column 2 of the Schedule to these Regulations;
- (b) any other expression used in these Regulations which is also used in the Council Regulation has the meaning given in the Council Regulation; and
- (c) any reference to a numbered Article is a reference to the Article so numbered in the Council Regulation.

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(a) 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.

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

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

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

### **Submission of applications for authorisation to market products**

3. The national competent authority for the purposes of Articles 5 and 27 of the Council Regulation shall be the Food Standards Agency.

### **Enforcement**

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

### **Offences and Penalties**

5.—(1) Any person who contravenes or fails to comply with any of the specified Community provisions contained in Part I of the Schedule to these Regulations 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 level 5 on the standard scale; 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 contained in Part II of the Schedule to these Regulations 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—

- (a) section 3 (presumption 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 29 (powers to take samples);
- (e) section 30(8) (which relates to documentary evidence);
- (f) section 32 (powers of entry);
- (g) section 33 (obstruction of officers);
- (h) section 35(1) to (3) (punishment of offences) insofar as it relates to offences under section 33(1) and (2) as applied by paragraph (g);
- (i) section 36 (offences by bodies corporate);
- (j) section 36A (offences by Scottish partnerships); and
- (k) section 44 (protection of officers acting in good faith).

(2) Section 9 of the Act (inspection and seizure of suspect 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 material intended for use as 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 (7) shall apply where, on such an inspection, it appears to an authorised officer that the placing on the market of any genetically modified food fails to

comply with the Genetically Modified Food (Scotland) Regulations 2004 (“these Regulations”).

(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 these Regulations and–

- (a) if the authorised officer is so satisfied, shall forthwith withdraw the notice;
- (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 these 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 these Regulations, the sheriff shall condemn the food and order it to be destroyed or to be so disposed of as to prevent it from being used for human consumption or animal feed.

(6) Where the food is the subject of an authorisation issued under Section 1 of the Council Regulation and has been produced in accordance with any conditions relating to that authorisation but is not labelled as required by Article 13, the sheriff may–

- (a) order the food to be so labelled within a period or periods specified by the sheriff; and
- (b) where it has not been so labelled within the period or periods specified, condemn the food and order it to be destroyed or so disposed of as to prevent it from being used for human consumption or animal feed.

(7) The expenses of detention, labelling, destruction or disposal shall be borne by the operator.

(8) If a notice under subsection (2)(a) is withdrawn, or the sheriff by whom any food falls to be dealt with under subsections (5) or (6) refuses to condemn it or to order it to be labelled in accordance with these subsections, the food authority shall compensate the owner of the food for any depreciation in its value resulting from the action taken by the authorised officer.

(9) Any disputed question as to the right to or the amount of any compensation payable under subsection (8) shall be determined by a single arbiter appointed, failing agreement by the parties, by the sheriff.”.

## Revocation

7. The Genetically Modified and Novel Foods (Labelling) (Scotland) Regulations 2000(a) are hereby revoked.

## Amendments

8. In the Novel Foods and Novel Food Ingredients Regulations 1997(b)–

(a) in regulation 2(1), in the definition of “Regulation (EC) No. 258/97”, after “ingredients” insert “, as amended by Regulation (EC) No. 1829/2003 of the European Parliament and of the Council on genetically modified food and feed”; and

(b) in the Schedule, after item 6–

(i) insert in the first column “7. Article 8.1”; and

(ii) in the second column insert–

“Requirement that labelling inform the final consumer of any characteristic or food property which renders a novel food or food ingredient no longer equivalent to an existing food or food ingredient.”.

Authorised to sign by the Scottish Ministers

St Andrew’s House,  
Edinburgh

2004

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(a) S.S.I. 2000/83.

(b) S.I. 1997/1335, amended by S.I. 1999/1756 and 3182 and S.S.I. 2000/62 and 83.

## THE SCHEDULE

Regulation 5

## SPECIFIED COMMUNITY PROVISIONS

## PART I

<i>Provision of the Council Regulation</i>	<i>Subject Matter</i>
Article 4.2	Prohibition on placing on the market a food referred to in Article 3.1 unless it is covered by an authorisation and satisfies relevant conditions of the authorisation.

## PART II

<i>Provision of the Council Regulation</i>	<i>Subject Matter</i>
Article 8.6	Requirement that products in respect of which the Commission have adopted a measure under Article 8.6 shall be withdrawn from the market.
Article 9.1	Requirement that an authorisation holder and parties concerned must comply with any conditions or restrictions imposed on an authorisation for a food product and with post-market monitoring requirements.
Article 9.3	Requirement that an authorisation holder inform the Commission of any new scientific or technical information relating to a food product, which might influence the evaluation of the safety in use of the food or of any prohibition or restriction on the food in a third country.
Article 13	Requirement for certain labelling indications.

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*