

REGULATORY APPRAISAL

FOOD, WALES

THE FOOD (EMERGENCY CONTROL) (REVOCATION) (WALES) REGULATIONS 2006

Background

1. Commission Decision 2006/540/EC was published in the Official Journal in July 2006. The Commission Decision applies from 1 October 2006. It harmonises special conditions on the import into the EU of certain foodstuffs imported from certain third countries. It has not been possible to make these Regulations by 1 October 2006 under Standard procedures, because the Commission Decision to consolidate the Regulations was not published in the Official Journal until 12 July 2006, the beginning of the Assembly's Summer recess.
2. The Commission Decision is a consumer protection measure that consolidates, harmonises and extends the special conditions imposed on the import into the European Union of certain foodstuffs imported from certain third countries due to contamination risks of these foodstuffs by aflatoxins.
3. Aflatoxins are toxins formed by the growth of certain moulds on food commodities grown in warm, humid conditions in the tropics and sub-tropics. They occur mainly in commodities imported from third countries, in particular peanuts, edible nuts and dried figs and products thereof. There are a number of different types of aflatoxin, with aflatoxin B₁ being the most toxic. It is a potent carcinogen in laboratory animals and there is evidence that it is a genotoxic human carcinogen i.e. it can cause cancer by reacting with genetic material. National and international expert bodies have recommended that aflatoxin concentrations in food should be reduced to the lowest levels technologically achievable.

Purpose and intended effect of the measure

4. These Regulations will revoke and replace earlier emergency control Regulations currently implementing Commission Decisions 2000/49/EC, 2002/79/EC, 2002/80/EC, 2003/493/EC and 2005/85/EC. They also implement Commission Decisions imposing special conditions on the import into the EU of certain foodstuffs imported from certain third countries. These are necessary because of the risk of contamination of these foodstuffs by aflatoxins. Many of the special conditions for the import of these foodstuffs are the same and therefore, in the interest of clarity and harmonisation, they have been consolidated into a single Decision (Commission Decision 2006/540/EC). The Commission Decision applies from 1 October 2006.
5. The consolidated Decision has been enacted into Welsh law by a Declaration made under regulation 33 of the Official Feed and Food Controls (Wales) Regulations 2006, which provides that Declarations may suspend or impose conditions on the import of food that is likely to constitute a serious risk to public health. The Regulations are needed to necessarily revoke the Emergency

Control Regulations implementing previous individual Commission Decisions as follows:-.

- The Food (Peanuts from China) (Emergency Control) (Wales) (No. 2) Regulations 2002;
- The Food (Peanuts from China) (Emergency Control) (Amendment) (Wales) Regulations 2003;
- The Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Amendment) (Wales) Regulations 2002;
- The Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Wales) (No. 2) Regulations 2002;
- The Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Wales) (Amendment) Regulations 2003;
- The Food (Brazil Nuts) (Emergency Control) (England) Regulations 2003;
- The Food (Pistachios from Iran) (Emergency Control) (Wales) (No.2) Regulations 2003;
- The Food (Pistachios from Iran) (Emergency Control) (Wales) (No.2) Amendment Regulations 2005; and
- The Food (Peanuts from Egypt) (Emergency Control) (Wales) Regulations 2003.

Risk Assessment

6. The UK has a legal obligation to ensure that the requirements of Commission Decision 2006/540/EC are translated into domestic law. These Regulations have been developed for this purpose. Not making these Regulations may maintain an unacceptable risk to human health and would hamper local authorities in their enforcement duties to protect public safety.

Consultation With Small Business

7. The companies involved in this area are represented through their national trade bodies to those that represent them at European level. The Small Business Service consulted widely with small firms and their representatives to seek views on possible impact of these proposals. No substantial comments were received.

Options

8. In respect of this legislation, the “Do Nothing” option is not an option, as it would ultimately lead to infraction proceedings against the National Assembly for Wales by the European Commission. Therefore, the “Make the Legislation” option, to implement the changes required to comply with European legislation, is being recommended.

Devolution

9. Similar Regulations are due to come into force in Scotland, England and Northern Ireland on 1 October 2006.

Costs

10. Enforcement of this Regulation will be the responsibility of local authorities. Local authorities are already undergoing sampling and monitoring of certain foods from certain third countries to protect public safety from harmful contaminants. The revocation of the Emergency Control Regulations has no impact on the private or public sector (including local authorities). There are no identified costs to the Assembly as a result of these Regulations.

Benefits

11. The Regulations implement Commission Decisions imposing special conditions on the import into the EU of certain foodstuffs imported from certain third countries. These are necessary because of the risk of contamination of these foodstuffs by aflatoxins. Many of the special conditions for the import of these foodstuffs are the same and therefore, in the interest of clarity and harmonisation, they have been consolidated into a single Decision (Commission Decision 2006/540/EC). This consolidation will simplify and clarify the Regulations relating to imports of foodstuffs that could be contaminated by aflatoxins, thus reducing any possible risks to human health.

Consultation

With Stakeholders

12. The Agency undertook a written consultation on the issues relating to the revocation when it consulted on The Contaminants in Food (Wales) (No. 2) Regulations 2006 earlier this year. The formal consultation in England of over 700 interested parties including consumer groups, industry, enforcement authorities and other government bodies, in the six weeks from 1 April 2006 to 19 May 2006, produced five responses, none of which related to the revocation elements of the Regulations. In Wales, a four week public consultation was carried out from 30 April 2006 to 4 June 2006. Stakeholders in Wales were specifically invited to comment upon any financial implications, which might arise from the Regulations. The Welsh Consumer Council was the only organisation to respond and it had no substantive comments to make. A list of consultees is attached at Annex 1.

With Subject Committee

13. These Regulations were notified to the Health & Social Services Committee, via the list of forthcoming legislation, on 23 November 2005 (HSS(2)-12-05 (p.1b) item no: FSA 32(05)). It was originally listed as The Nuts from Third Countries Regulations Wales. The Regulations were not identified for detailed scrutiny. These Regulations were not notified to the Environment, Planning and Countryside Committee, because they deal solely with public health issues and do not carry any financial implications for the private or public sector, industry or local authorities.

Competition Assessment

14. The provision of enforcement powers to the proper authorities in Wales does not place any hindrance on the competitiveness of businesses.
15. Industry has been closely involved at European level, principally through representation by British business, in the development of the harmonised EU rules that these proposals relate to and has not raised any issues that indicate a disadvantage to any business sector.

Enforcement and Sanctions

16. The enforcement of The Food (Emergency Control) (Revocation) (Wales) Regulations 2006 will be the responsibility of the enforcement authorities (local authorities).

Monitoring and Review

17. Member States are obliged under the provisions of Regulation (EC) No. 1935/2004 to ensure that inspections and other control measures, as appropriate, are carried out to ensure compliance with the Regulation. After the new Regulations have come into force the Food Standards Agency will routinely ensure compliance with the Regulations and work with enforcement authorities where problems or suspected infringements of the Regulations arise.

Summary

18. The impact of any additional burdens and costs introduced by the proposal on EU measures setting maximum levels for contaminants in foodstuffs has applied since 2002. The Commission Decision is a consumer protection measure that consolidates, harmonises and extends the special conditions imposed on the import into the EU of certain foodstuffs imported from certain third countries due to contamination risks of these foodstuffs by aflatoxins.

Annex I

INTERESTED PARTIES IN WALES

Organisation
Ruddock & Sherratt
Good Food Distributors
Gwynedd CC
Meridian Foods
Co-operative Group (CWS) Ltd
Kwik Save Group Ltd
Wales Young Farmers' Club
Peters Food Service Ltd
T/A Source Foods
G C Hahn & Co Ltd
British Retail Consortium (BRC)
Abergavenny Fine Foods Ltd
ADAS Wales
The Association of Public Analysts
Bar & Restaurant Foods Ltd
Biotrace Limited
Clark's Original Pies
Farmer's Union of Wales
Torfaen County Borough Council
Food Safe
Halo Foods Ltd
Iceland Frozen Foods Plc
Welsh Food Alliance
Local Authorities Co-ordinators or Regulatory Services (LACORS) - Welsh Officer
National Farmers Union (Wales)
Rachel's Dairy
School of Environmental Sciences
The Organic Working Group
Shoda Sauces Europe
Tillery Valley Foods Ltd
Tovali Ltd
Welsh Consumer Council
Chartered Institute of Environmental Health in Wales
Welsh Food Microbiological Forum
WDA Food Directorate
Zorba Foods
PRP Training Ltd
Member - Welsh Food Advisory Committee

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Member - Welsh Food Advisory Committee
Welsh Local Government Association
Blaenau Gwent CBC
Cardiff County Council
Conwy County Borough Council
Newport CBC
Powys CC
City & County of Swansea
Wrexham County Borough Council
J Sainsbury Plc
NPHS in Wales
Conwy Mussel Company
Flintshire County Council
Member - Welsh Food Advisory Committee
Pembrokeshire County Council
Caerphilly CBC
Merthyr Tydfil Borough Council
Minton, Treharne & Davies Ltd
Cardiff Scientific Services
Rhondda Cynon Taff CBC