

## **Explanatory Memorandum to the Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2013**

This Explanatory Memorandum has been prepared by the Food Standards Agency and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Member's Declaration**

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2013. I am satisfied that the benefits outweigh any costs.

**Mark Drakeford AM**

Minister for Health and Social Services

3 July 2013

# **Explanatory Memorandum for the Specified Products from China (Restriction on First Placing on the Market) (Wales) (Amendment) Regulations 2013**

## **1. Description**

This Statutory Instrument will provide for the implementation, in Wales, of Commission Implementing Decision 2013/287/EU on emergency measures regarding unauthorised genetically modified rice in rice products originating from China.

## **2. Matters of Special Interest to the Constitutional and Legislative Affairs Committee**

The Instrument breaches the 21 day rule. Member States are required under European law to transpose and implement the provisions of the Commission Implementing Decision into domestic Legislation by 4 July 2013. We understand that parallel legislation in England, Scotland and Northern Ireland will also come into force no later than 4 July 2013. The breach of the 21-day rule is required to avoid a gap in import controls and associated risk of food and animal feed containing unauthorised genetically modified organisms entering the UK or being released into free circulation within the EU.

The Constitutional and Legislative Affairs Committee will wish to note that the Commission Implementing Decision was only published in the Official Journal on 14 June 2013.

## **3. Legislative Background**

Welsh Ministers make these Regulations under powers conferred on them under section 2(2) of the European Communities Act 1972. The Welsh Ministers have been designated for the purposes of section 2(2) in relation to measures relating to food (including drink) including the primary production of food and measures relating to feed produced for or fed to food-producing animals in the European Communities (Designation) (No. 2) Order 2005.

This instrument is subject to the negative procedure.

## **4. Purpose and Intended Effect of the Legislation**

In 2006, EU Member States began detecting unauthorised GM rice (Bt63) in consignments of rice and rice products imported from China. The EU Commission subsequently published emergency Commission Decision 2008/289/EC requiring additional import controls for such consignments imported from China ("the Bt63 Decision"). The Specified Products from China (Restriction on First Placing on the Market) (Wales) Regulations 2008 (SI No.1080 (W.114) implemented this Decision in Wales

In 2010, two new GM rices (Kefeng 6 and KMD1), which are not authorised in the EU or China, were detected in imported food and notified via the EU Rapid Alert System for Food and Feed (RASFF). Subsequent inspection missions to China by the Commission's Food and Veterinary Office (FVO) in 2011 indicated there was a high risk of unauthorised GMOs in rice and rice products from China.

The Commission subsequently published a proposal for emergency import restrictions to replace the Bt63 Decision - Commission Implementing Decision 2011/884/EU. The 2011 Decision strengthened the import controls of the 2008 'Bt63 Decision' and provided for a review of the emergency measures therein to assess whether they were still necessary and appropriate. The 2011 Decision was implemented in Wales by the Specified Products from China (Restrictions on First Placing on the Market) (Wales) (Amendment) Regulations 2012 (SI No. 64 (W.15)).

Since the 2011 Decision, there have been 56 notifications from Member States to the RASFF system. Continuation of 2011 Decision emergency measures are therefore needed to prevent the placing on the market of GM food and feed not authorised in line with Regulation (EC) 1829/2003 (the GM food and feed regulations).

From the experience gained by Member States following the 2011 Decision and from information collected from stakeholders by the Commission, it is again necessary to adjust some of the requirements set out in that Decision. In particular, Member States' official controls have shown that other products, which may contain rice, should be covered by the emergency measures and that the Competent Authority should have the ability to carry out physical checks on such products if necessary.

Some Member States have also highlighted the 2011 Decision requirement for prior notification of consignments was not fully aligned with particular official control requirements. To avoid future misunderstanding it should therefore be detailed that prior notifications should be addressed to the Competent Authority at the Border Inspection Post or at the Designated Point of Entry.

The 2011 Decision defined a common protocol for sampling and analysis to control the absence of GM rice. Experience to date has shown the majority of imports caught by that Decision are processed products, where the presence of unauthorised GM rice is likely to be distributed homogeneously throughout the lot. In light of this, it is necessary to add an additional sampling protocol more appropriate for such products.

The 2013 Decision will strengthen the 2011 Decision by requiring:

- The presentation of specific import entry documents to the Border Inspection Post or the Designated Point of Entry: and
- Revised sampling and analysis procedures.

The 2013 Decision allows a transitional period until 5 October 2013 in order to give food and feed businesses time to adapt to the measures applying to additional products. The effectiveness of the measures will continue to be reviewed.

The Regulations implement the requirements of the 2013 Decision in Wales.

### UK Position

Parallel Regulations are expected to come into force in England, Scotland and Northern Ireland no later than 4 July 2013. Due to the tight timescales involved it is necessary that the Statutory Instrument comes into force without complying with the 21-day rule. This avoids a gap in import controls and associated risk of food and animal feed containing unauthorised GMOs entering the UK or being released into free circulation within the EU. Any gap in import controls would not be viewed favourably by the Commission or other Member States it is considered that the risk of challenge of infraction proceedings by the Commission to be high if this were to happen.

## **5. Consultation**

Due to the timescales, (the Commission Implementing Decision was only published in the Official Journal on 14 June 2013) the FSA, which has policy responsibility for GM food and animal feed, was unable to conduct a formal 12-week public consultation before the Regulations were required to be made. The FSA will complete the necessary public consultation as soon as possible to identify the impact on Enforcement Officers and industry in Wales.

## **6. Regulatory Impact Assessment**

A Regulatory Impact Assessment has not been prepared for the Instrument, as the FSA has been unable as yet to identify any costs to consumers, businesses or local enforcement authorities in Wales associated with the implementation of the new Regulations.

There is likely to be a one-off familiarisation cost to food and feed business operators that import rice or rice products originating in, or consigned from, China, as well as wholesalers and retailers. There is also likely to be costs to Enforcement Authorities with regards to the submission of the results of the analytical tests carried out on relevant consignments to the FSA for onward transmission to the Commission on a quarterly basis. A more accurate picture of the cost implications will emerge during the consultation period.