EXECUTIVE NOTE

THE FOOD PROTECTION (EMERGENCY PROHIBITIONS) (DALGETY BAY) (SCOTLAND) ORDER 2012

(S.S.I. 2012/135)

1. Description

1.1. The above instrument was made in exercise of the powers conferred by sections 1(1) and (2) and 24(3) of the Food and Environment Protection Act 1985. The instrument is subject to ”emergency” procedure in terms of section 1(8) of the 1985 Act.

2. Policy Objective

2.1. This instrument provides protection to consumers from a potential food chain risk due to the presence of radioactive particles at Dalgety Bay in Fife.

3. Legislative Background

3.1. The 1985 Act enables the Scottish Ministers to make emergency orders specifying activities which are to be prohibited as a precaution against the consumption of food rendered unsuitable for human consumption as a consequence of escaped substances.

3.2. This instrument has the effect of making it an offence to fish for, remove and use fish (including shellfish) (as defined in section 24 of the 1985 Act) from an area designated by the instrument at Dalgety Bay in terms of Part 1 (contamination of food) of the 1985 Act. There are related enforcement powers, provided by the 1985 Act.

4. Policy Background

4.1. Particles & clinker contaminated with radium-226 (Ra-226) have been detected on the beach at Dalgety Bay since 1990 and are believed to originate from past operations at the former Donibristle military airbase at Dalgety Bay. Radium and its ‘daughters’ (radioactive breakdown products) emit alpha radiation which can increase the risk of cancer.

4.2. An intensive survey began in September 2011 and found numerous radioactive items on the beach - ranging from small particles to clinker-like lumps - many with relatively high Ra-226 levels.

4.3. Some particles are small and some can easily break apart so they could be ingested by fish (including shellfish) and subsequently enter the food chain. Additionally some particles have been shown to be soluble in the human gut which increases the dose which could be received.

4.4. There is no fishing or shellfish industry in the area; however individuals are known to collect shellfish from the designated area for consumption or use as bait. This is despite signs indicating that radioactive contamination has been found in this area and fish and shellfish should not be collected.

4.5. COMARE (the Committee on Medical Aspects of Radiation in the Environment) have indicated that action should be taken to reduce the risk to the public at Dalgety Bay.

4.6. The potential food chain dose has been assessed by the FSA based on recent data and reviewed by the Health Protection Agency. Several results exceeded the 1 millisievert annual allowable dose to members of the public indicating a potential risk to consumers.

4.7. There is currently insufficient information to calculate the probability of encountering a particle. The recent increase in particle discoveries, their activities and the dynamic nature of the coastal environment also needs to be considered.

4.8. Given the potential ingestion doses and the uncertainty over the risk of encounter: the FSA considers it appropriate to make this instrument on the basis that there exists or may exist

circumstances which are likely to create a hazard to human health through human consumption of food which is derived, or may be in future derived, from fish in the area designated by this instrument which is, or may be, or may become, unsuitable for human consumption. This instrument strengthens public protection by adding to the advice which is already in place. Preparations for this instrument to be made began immediately, following the review of the FSA dose assessment. This instrument is being brought into force quickly after it is laid.

5. Consultation

5.1. The FSA has kept stakeholders informed of potential food chain implications through the Dalgety Bay Forum (DBF) and has contributed to the Dalgety Bay Particles Advisory Group (DBPAG). There is no fishing or shellfish industry in the affected area; however consumers have been informed of the issue via the FSA's website.

5.2. The Scottish Government has representation on both the DBF and DBPAG and their Radioactive Waste Team has been regularly updated. The FSA also attended a multi-agency Dalgety Bay Public Health Risk Assessment meeting convened by the Scottish Government in November 2011 and an MSP Radioactive Substances Awareness Event in April 2012.

6. Financial Effects

6.1. Any financial effects are expected to be negligible as there is no fishing or shellfish industry in the designated area.

7. Monitoring & review

7.1. Fife Council Local Authority will have responsibility for enforcing this food safety legislation.

7.2. Shellfish monitoring results from the Dalgety Bay designated area will be posted on the FSA's website (www.food.gov.uk) and summarised in the Radioactivity in Food and the Environment report which is published in autumn each year.

7.3. In terms of the 1985 Act, a motion before and approved by the Scottish Parliament is required to extend the effect of a FEPA Order beyond 28 days. Assuming the Order is required for a longer period, the FSA will review the need for the FEPA Order in light of new evidence and/or effective remediation and after 1 year at the latest.

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