EXPLANATORY MEMORANDUM TO

THE SPECIFIED PRODUCTS FROM CHINA (RESTRICTION ON FIRST PLACING ON THE MARKET) (ENGLAND) (AMENDMENT) REGULATIONS 2013

2013 No. 1683

1. This explanatory memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument provides for the implementation in England of the provisions of Commission Implementing Decision 2013/287/EU[1] on emergency measures regarding unauthorised genetically modified (GM) rice in rice products originating from China ("the emergency Decision") and amending Commission Decision 2011/884/EU. It achieves this by amending the Restriction on Specified Products from China (First Placing on the Market) (England) Regulations 2008, as amended by the Restriction on Specified Products from China (First Placing on the Market) (England) (Amendment) Regulations 2012 ("the 2008 Regulations").

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument comes into force on 10 July 2013 to align the coming into force of the statutory instrument as closely as is practical with the date of 4 of July on which the emergency Decision specifies it must be implemented in Member States. It therefore breaches the Parliamentary 21-day rule. The emergency Decision was published in the Official Journal of the European Union (EU) on 14 June 2013 restricting the time available to bring the instrument into force.

3.2 It is necessary for this instrument to come into force as early as possible after 4 July 2013 to reduce the gap in import controls between the amendment of Commission Decision 2011/884/EU and its implementation..

4. Legislative Context

4.1 Regulation (EC) No. 1829/2003[2] stipulates that food and feed containing GM material cannot be placed on the market in the EU unless the associated genetically modified organism has been authorised under the Regulation, following a rigorous safety assessment.

[1] OJ No., L162, 14.06.2013, p.10
[2] Regulation (EC) No. 1829/2003 on Genetically Modified Food and Feed

4.2 The emergency Decision is made under Article 53 of Regulation (EC) No. 178/2002[3] (emergency measures for food and feed). It lays down additional controls for the import into the EU of rice and rice products originating in, or consigned from, China for use as food or animal feed with the aim of avoiding the import of such products containing unauthorised GM rice.

4.3 This instrument is made under Section 2(2) of the European Communities Act 1972 and implements the emergency Decision by means of further amendments to the 2008 Regulations. It provides for: minor alterations to the list of product CN codes to which the Decision applies; a requirement to provide a common entry document (CED) at the point of entry which aligns the Decision with the requirement for provision of a CED with most imported food consignments and, where appropriate, an option to provide a Common Veterinary Entry Document (CVED) at a border inspection post (BIP).

5. Territorial Extent and Application

5.1 This instrument applies to England only.

5.2 Separate but parallel legislation is being made for Scotland, Wales and Northern Ireland.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- What is being done and why

7.1 In 2006, EU Member States began detecting the presence of the unauthorised GM rice variety 'Bt63' in consignments of rice and rice products imported from China. The Commission took matters up with the Chinese authorities and after initial improvement, the situation worsened again in 2007. The Commission therefore brought forward emergency Commission Decision 2008/289/EC requiring additional import controls for consignments of rice and rice products imported from China ("the Bt63 Decision").

7.2 Inspection missions to China by the Commission's Food and Veterinary Office (FVO) in Autumn 2008 and Spring 2011 indicated uncertainty as to the level, number and type of GM rice varieties which may be circulating in China and consequently that there was a high risk of several types of unauthorised GM rice being present in rice and rice products imported from China.

7.3 In the light of the outcomes of the FVO missions, the European Commission brought forward a proposal for emergency import restrictions to replace those set out in the Bt63 Decision. The proposal was agreed by Member States and was published formally in the Official Journal of 23 December 2011 as

[3] Regulation (EC) No. 178/2002 laying down the general principles of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety

Commission Implementing Decision 2011/884/EU. It came into force on 12 January 2012.

7.5 The requirements of the emergency Decision are summarised below:

i. Food and feed business operators must give adequate prior notice of the arrival of consignments falling within the Combined Nomenclature (CN) customs codes listed at Annex I ("relevant consignments").

ii. Relevant consignments must be accompanied by either:

- An analytical report confirming the absence of GM rice, based on the analytical methods stipulated in Annex II and a health certificate signed and verified by an authorised representative of the Chinese import/export authority; or

- A statement indicating that the products in the consignment do not contain or consist of rice and have not been produced from rice.

iii. Relevant consignments that are not accompanied by the required documentation must be re-dispatched to the country of origin or destroyed.

iv. All relevant consignments accompanied by analytical reports and health certificates must be sampled by Enforcement Authorities and analysed in accordance with the methods stipulated in Annex II to ensure the absence of unauthorised GM rice.

v. All costs arising from the official controls undertaken must be borne by food and feed business operators.

vi. Quarterly reports of the results of analytical tests carried out and the number of consignments rejected due to the absence of the necessary documentation must be submitted to the European Commission to allow it to monitor the effectiveness of the emergency Decision.

7.6 The effects of the latest amendments are:

i. Three additional product categories have been brought within the scope. These are foodstuffs that are not primarily based on rice but which, in the experience of some control authorities, can be imported from China with rice or rice derivatives as ingredients

ii. There is a new requirement to provide a common entry document (CED) at the point of entry, which aligns the Decision with the requirement for provision of a CED with most imported food consignments subject to increased controls. Where appropriate a Common Veterinary Entry Document (CVED) may be presented to a border inspection post (BIP).

iii. The number of duplicate analyses to be carried out on samples of processed foods has been reduced. This results in significant

reductions in the resources required and the associated costs, which are passed on to importers.

8. Consultation outcome

Informal Consultation

8.1 The Food Standards Agency (FSA), which has policy responsibility for GM food and animal feed, has written to enforcement and industry partners and their representatives drawing their attention to the amended emergency Decision and its requirements.

Formal Public Consultation

8.2 Due to short timeframe within which the emergency Decision is to come into force following its formal publication in the Official Journal of the EU, it has not been possible for the FSA to carry out a formal public consultation. The FSA will carry out a formal public consultation on this instrument and an associated impact assessment as soon as possible and will publish a full summary of comments received in response to the consultation on its website.

9. Guidance

9.1 The FSA has no current plans to issue detailed guidance, but has written to interested parties to alert them to the legislative changes. The FSA will also work with interested parties if any further problems or issues arise.

9.2 Public Analysts will be alerted to the need to alter the method of sampling and analysis applicable to certain products subject to this Decision.

10. Impact

10.1 Food and feed business operators that import rice or rice products originating in, or consigned from, China may be affected by the amendments to the emergency Decision and this instrument, as will wholesalers and retailers (including SMEs).

10.2 Operators will need to be aware of the differences between the requirements of the 2012 Decision and those of the emergency Decision. As such, there will be one-off costs to operators associated with reading and familiarising themselves with the emergency Decision and the amendments this instrument makes to the 2012 Regulations.

10.3 The actual costs incurred by Enforcement Authorities in undertaking the official controls required by the emergency Decision are borne by food and feed business operators. As such, operators will benefit from an overall reduction in the costs of testing processed foods, which comprise the majority of the imported products that fall within the scope of the emergency Decision.

10.5 No additional impact on the public sector is expected as a result of these amendments.

10.6 Due to the short timeframe within which the emergency Decision is to come into force following its publication in the Official Journal of the EU, the FSA has been unable to finalise an Impact Assessment. Following formal public consultation the Impact Assessment will undergo scrutiny by the Regulatory Policy Committee and Reducing Regulation Committee. It will then be submitted for Ministerial signature and published alongside this Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1 The instrument will apply to all businesses small and large.

12. Monitoring & review

Monitoring

12.1 The emergency Decision requires Member States to submit to the Commission a quarterly report of all results of analytical tests carried out during the period to enable them to monitor its effectiveness.

12.2 The Agency will work with Enforcement Authorities where problems or suspected infringements of the legislation arise. The effectiveness of the instrument will be also be monitored via general feedback from industry and Enforcement Authorities on the number of consignments that fail to comply with the Decision.

Statutory Review

12.3 The FSA is required, by virtue of Regulation 3 of this instrument, to carry out a review of the 2008 Regulations, as amended by this instrument, within five years of it coming into force.

12.4 In carrying out the review, the FSA is required to produce a report that sets out the objectives of this instrument, the extent to which they have been achieved and whether they could be achieved by means that impose less regulation. Information gathered via the activities described in paragraphs 12.1 and 12.2 above will inform the review.

13. Contact

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