

STATUTORY INSTRUMENTS

S.I. NO. 79 OF 2002

European Communities (Imposing Special Conditions on the Import of Figs, Hazelnuts and Pistachios and Certain Products Derived Thereof Originating in or Consigned from Turkey) Regulations, 2002

I, Michael Martin, Minister for Health and Children in exercise of the powers conferred on me by Section 3 of the European Communities Act, 1972 (No. 27 of 1972), having regard to Council Directive 93/43/EEC¹ of 14 June 1993 on the hygiene of foodstuffs, and Commission Regulation 194/97² of 31 January 1997 setting maximum levels for certain contaminants in foodstuffs, as last amended by Regulation 1566/1999³ setting maximum levels for contaminants in foodstuffs and in particular aflatoxins in foodstuffs, and for the purposes of giving full effect to Commission Decision of 4 February 2002 laying down special conditions on the import of figs, hazelnuts and pistachios and certain products derived thereof originating in or consigned from Turkey (2002/80/EC⁴), hereby order as follows :-

⁴ OJ L 34, 5.2.2002, p. 26

³ OJ L 184, 17.7.1999, p. 17

² OJ L 31, 1.2.1997, p. 48

¹ OJ L 175, 19.7.1993, p. 1

1. These Regulations may be cited as the European Communities (Imposing Special Conditions on the Import of Figs, Hazelnuts and Pistachios and Certain Products Derived Thereof Originating in or Consigned from Turkey) Regulations, 2002.

2. (1) In these Regulations:

"Act of 1998" means the Food Safety Authority of Ireland Act, 1998 (No. 29 of 1998);

"Annex I" means Annex I to Commission Decision 2002/80/EC;

"Annex II" means Annex II to Commission Decision 2002/80/EC;

"approved examiner" has the meaning assigned to it by the European Communities (Official Control of Foodstuffs) Regulations 1998 (S.I. No. 85 of 1998);

"authorised officer" means -

(a) an authorised officer appointed under section 49 of the Act of 1998,

(b) in relation to the functional area of a health board, a person or a person belonging to a class of persons, authorised in writing by the chief executive officer of the health board to perform the functions of an authorised officer under these Regulations, or

(c) a member of the Garda Síochána;

"the Authority" means the Food Safety Authority of Ireland established under section 9 of the Food Safety Authority of Ireland Act, 1998 (No. 29 of 1998);

"Certificate of an approved examiner" means a certificate given by an approved examiner of any test, examination or analysis made under these Regulations;

"the Commission" means the Commission of the European Communities;

"the Commission Decision" means Commission Decision of 4 February 2002 laying down special conditions on the import of figs, hazelnuts and pistachios and certain products derived thereof originating in or consigned from Turkey (2002/80/EC);

"Foodstuff" means any substance used for food or drink by man, and

(a) any substance which enters into or is used in the composition or preparation of human food,

(b) any substance which enters into or is used in the composition or preparation of any such substance aforesaid, and

(c) chewing gum and products of a similar composition and use and references to foodstuff include, as the context may require, references to a particular food, particular foods or a class or classes of food;

"functional area" means :-

(a) in relation to a health board the functional area of the health board as specified in the Health Board Regulations, 1970 (S.I. No. 170 of 1970);

(b) in relation to the Eastern Regional Health Authority, means its functional area as specified in section 7(4) of the Health (Eastern Regional Health Authority) Act, 1999 (S.I. No. 13 of 1999);

"functions" includes powers and duties and references to the performance of functions include references to the exercise of powers and the performance of duties;

"health board" means -

(a) a board established under section 4 of the Act of 1970, or

(b) an Area health board established by section 14 of the Health (Eastern Regional Health Authority) Act, 1999.

"import" means the importation into the State;

"Minister" means the Minister for Health and Children;

"Official Control of Foodstuffs" hereinafter called "control of foodstuffs" means an inspection by authorised officers of the compliance of foodstuffs, with provisions aimed at preventing risks to public health, guaranteeing fair commercial transactions or protecting consumer interests, including provisions on consumer information;

"Official laboratory" means

(a) a laboratory approved in writing by the Minister to analyse any samples of a controlled item taken by an authorised officer for the purposes of these Regulations, or

(b) a laboratory approved in writing by the Chief Executive Officer of a health board with the consent of the Minister to analyse any samples of a controlled item taken by an authorised officer for the purposes of these Regulations;

"place on the market" means -

(a) import,

(b) sell,

(c) offer or expose for sale,

(d) invite the making by a person of an offer to purchase,

- (e) distribute free of charge, or
 - (f) supply for any of those purposes,
- and cognate words shall be construed accordingly;

"Public analyst" means an analyst appointed by a health board to carry out the duties of a public analyst for the area of the board or an analyst designated by a health board to be a public analyst for its area;

(2) A word or expression that is used in these Regulations and is also used in the Commission Decision has, unless the contrary intention appears, the meaning in these Regulations that it has in the Commission Decision.

3. (1) A person may not import products falling in any of the following categories, originating in or consigned from Turkey, which are intended for human consumption or to be used as an ingredient in foodstuffs, unless the consignment is accompanied by the results of official sampling and analysis, and by the health certificate in Annex I completed, signed and verified by a representative of the general Directorate of Protection and Control of the Ministry of Agriculture and Rural Affairs of the Republic of Turkey :

- figs and dried figs falling within CN codes 0804 20 10 or 0804 20 90;
- hazelnuts (*Corylus* sp) in shell or shelled falling within CN code 0802 21 00 or CN code 0802 22 00;
- pistachios falling within CN code 0802 50 00;
- mixtures of nuts or dried fruits falling within CN code 0813 50 and containing figs, hazelnuts or pistachios;
- hazelnuts, figs and pistachios, prepared or preserved, including mixtures falling within CN code 2008 19;

(2) Consignments may only be imported into the State through one of the Irish points of entry listed in Annex II;

(3) Each consignment shall be identified with a code, which corresponds to the code on the health certificate and on the accompanying report containing the result of the official sampling and analysis referred to in Regulation 3(1).

4. A person who imports products in contravention of Regulation 3 shall be guilty of an offence.

5. A person who places on the market, or has in his possession for the purpose of placing on the market products in contravention of Regulation 3 shall be guilty of an offence.

6. Control of foodstuffs shall be carried out in accordance with the provisions of these Regulations.

7. These Regulations shall be enforced by the Food Safety Authority of Ireland.

8. These Regulations shall be deemed to be food legislation for the purposes of the Act of 1998 and the enforcement provisions contained in that Act shall accordingly apply for the purpose of ensuring compliance with these Regulations.

9. (1) The Authority shall ensure that imported dried figs, hazelnuts and pistachios originating in or consigned from Turkey are subject to documentary

checks to ensure that the requirement for the health certificate and sampling results referred to in Regulation 3(1) are complied with;

(2) For the purposes of ensuring compliance with these Regulations the Authority shall undertake at random sampling and analysis of the consignments of dried figs, hazelnuts, and pistachios originating in or consigned from Turkey for aflatoxin B1 and total aflatoxin;

(3) The Authority shall inform the Commission of the results of random sampling and analysis referred to in Regulation 9(2).

10. (1) Without prejudice to Regulation 8, the powers contained in the European Communities (Official Control of Foodstuffs) Regulations, 1998 (S.I. No. 85 of 1998), as amended, may be exercised for the purpose of ensuring compliance with these Regulations;

(2) An official certificate given in accordance with sub-article (1) of Article 14 of the said Regulations of 1998, as amended, may be adduced in evidence in a prosecution under these Regulations and shall be *prima facie* evidence of the matters contained therein, until the contrary is proved.

11. Without prejudice to Regulations 7, 8, 9 and 10, prior to the European Communities (Communities (Imposing Special Conditions on the Import of Figs, Hazelnuts and Pistachios and Certain Products Derived Thereof Originating in or Consigned from Turkey) Regulations, 2002 being added to Schedule 1 of the service contract entered into by a health board and the Food Safety Authority under the Act of 1998, the powers contained in Regulations 13 to 17 may be exercised by an authorised officer appointed under Regulation 12 for the purpose of ensuring compliance with these Regulations.

12. (1) The chief executive officer of a health board may appoint in writing such and so many officers of the health board as he or she thinks fit to be authorised officers for the purposes of ensuring compliance with these Regulations in the functional area of the health board;

(2) An authorised officer shall be furnished with a certificate of his or her appointment as an authorised officer and, when exercising any power conferred on an authorised officer under these Regulations, shall, if requested by any person affected, produce the certificate to that person;

(3) For the purposes of ensuring compliance with these Regulations, after entering into a service contract between the Food Safety Authority and a health board the appointments referred to in paragraph (1) shall continue in force.

13. (1) For the purposes of ensuring compliance with these Regulations health boards shall ensure that imported dried figs, hazelnuts and pistachios originating in or consigned from Turkey are subject to documentary checks to ensure that the requirement for the health certificate and sampling results referred to in Regulation 3(1) are complied with;

(2) For the purposes of ensuring compliance with these Regulations health boards shall undertake at random sampling and analysis of the consignments of dried figs, hazelnuts, and pistachios originating in or consigned from Turkey for aflatoxin B1 and total aflatoxin;

(3) Health boards shall inform the Commission of the results of at random sampling and analysis referred to in Regulation 13(2).

14. (1) An authorised officer may for the purpose of ensuring that these Regulations are being complied with -

(a) at all reasonable times enter any premises, subject to paragraph (2), at which there are reasonable grounds to believe that any trade, business or activity in connection with the production, processing, disposal, manufacture, exportation, importation, storage, distribution, sale, marketing or labelling for the purposes of marketing of figs, hazelnuts and pistachios and certain products derived thereof originating in or consigned from Turkey to which these Regulations apply is or has been carried on, or that records in relation to such trade, business or activity are kept, and search and inspect the premises and any figs, hazelnuts and pistachios and certain products derived thereof originating in or consigned from Turkey, foodstuff, label or records found in or on the premises,

(b) require any employee of the health board, a former employee of the health board or any person otherwise currently or previously retained by the health board, or any person who carries or has carried on any trade, business or activity to which these Regulations relate or any person currently or previously employed in connection with that trade, business or activity to produce to him or her such records, and in the case of such information in a non-legible form to reproduce it in a permanent legible form, or to give him or her such information, as the officer may reasonably require in relation to any entries in such records,

(c) secure for later inspection any premises or any part thereof in which such product, label or records are kept with respect to which there are reasonable grounds for believing that such product, label or records are kept there,

(d) require any person in charge thereof or so employed therein, to produce to the officer such records and to give to the officer such information as the officer may reasonably require in relation to any entries in such records,

(e) inspect and take copies of or extracts from any such records (including in the case of information in a non-legible form a copy of or extract from such information in a permanent legible form),

(f) seize and detain any product which fails to comply with these Regulations which he or she has reason to believe is unfit for human consumption,

(g) remove and retain the said product, label or records for such period as may be reasonable for analysis, further examination or until the conclusion of any legal proceedings,

(h) as regards any product or any article or substance used in the manufacture or preparation of a product the officer finds at or in a premises, require any person in charge thereof or any person who appears to the officer to be in possession of the product or foodstuff or the article or substance, to supply without payment, for test, examination or analysis sufficient samples thereof,

(i) require any person to afford the officer such facilities and assistance within his or her control or responsibilities as are reasonably necessary to enable the officer to exercise any of the powers conferred on an authorised officer under this Regulation,

(j) require a person referred to in subparagraph (b) to give to the officer any information which the officer may reasonably require in regard to the trade, business or activity or in regard to the persons carrying on such trade, business or activity or employed in connection with that trade, business or activity,

(k) require any person referred to in subparagraph (b) by or on whose behalf data equipment is or has been used in relation to a business within the meaning of subparagraph (a) or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the officer all reasonable assistance in relation to its use in connection with such business,

(l) summon, at any reasonable time, any other person being or having been an employee of the health board or retained or having been retained by the health board or employed in connection with the trade, business or activity under examination by the health board to give to the officer any information which the officer may reasonably require in regard to that trade, business or activity and to produce to the officer any records which are in that person's power or control,

(m) examine any procedure connected with the manufacture of a product referred to in this Regulation, and

(n) exercise such other powers as may be necessary to ensure that these Regulations are being complied with;

(2) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under paragraph (6) authorising such entry;

(3) Where an authorised officer in the exercise of the officer's powers under this Regulation is prevented from entering any premises an application may be made to the District Court under paragraph (6) for a warrant authorising such entry;

(4) An authorised officer where he or she considers it necessary, may be accompanied by a member or members of the Garda Síochána when performing any powers conferred on an authorised officer under this Regulation;

(5) In this Regulation "premises" means any place, ship or other vessel, aircraft, railway wagon or other vehicle, and includes a container used to transport foodstuffs;

(6) If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for suspecting that there is information required by an authorised officer under this Regulation held on or in any premises or any part of any premises or there is a product which an authorised officer requires to inspect for purposes of these Regulations or that such inspection is likely to disclose evidence of a contravention of these Regulations, the judge may issue a warrant authorising an authorised officer, accompanied, if appropriate, by other authorised officers or by a member or members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production, if so requested, of the warrant, to enter, if need be by reasonable force, the premises and exercise all or any of the powers conferred on an authorised officer under this Regulation;

(7) An application under paragraph (6) shall be made to the judge of the District Court in whose district the premises is situated.

15. (1) An authorised officer may destroy or otherwise dispose of any product seized and detained by him or her under paragraph 1 (f) of Regulation 14, with the consent of the owner or person responsible for the product or upon the granting of an order under paragraph (3);

(2) An authorised officer who has seized and detained any product under paragraph 1(f) of Regulation 14 may, on giving notice in writing to the owner or person responsible for the product apply to a judge of the District Court in whose district the product was seized for an order directing that the product be destroyed or otherwise disposed of as being a foodstuff which is unfit for human consumption;

(3) A judge of the District Court to whom an application is made under paragraph (2) shall, if satisfied that such product does not comply with these Regulations or the Directive and is unfit for human consumption, order that it be destroyed or otherwise disposed of after such period, not exceeding 14 days, as may be specified in the order, as being a foodstuff which is unfit for human consumption.

16. (1) Where a sample of any product, article or substance is supplied pursuant to paragraph (1)(h) of Regulation 14 and where the division of the sample is reasonably practicable, the authorised officer concerned may divide the sample into not more than three approximately equal parts each of which he or she shall mark in such a way as to identify it as a part of the sample so supplied;

(2) The authorised officer shall mark, seal and fasten each part referred to in paragraph (1) in such a manner as its nature will permit, forward one part to a laboratory approved under the European Communities (Official Control of Foodstuffs) (Approved Laboratories) Order, 1998 (S.I. No. 95 of 1998), where it may be tested, examined or analysed for the purposes of these Regulations by an approved examiner, give or send one part to the seller, owner or person in apparent charge or control of the product, article or substance and retain the third part;

(3) Where an authorised officer is supplied with a sample consisting of a product, article or substance which is contained in unopened containers and its division into parts -

(a) is not reasonably practicable, or
(b) might affect the composition or impede the proper analysis of the sample,

the provisions of paragraph (1) as regards the division of samples into parts shall be deemed to be complied with if the authorised officer divides the containers into three lots and deals with each lot as if it were a sample as specified under paragraph (1).

17. (1) The approved examiner or a person under his or her direction shall analyse as soon as possible any sample of a product, article or substance submitted to him or her in pursuance of these Regulations and the approved examiner shall certify to the person who submitted the sample to him or her the result of such analysis;

(2) If the approved examiner finds that any sample analysed by him or her under paragraph (1) is diseased, contaminated or otherwise unfit for human consumption he or she should set out his or her findings in the form of certificate set out in the Schedule to these Regulations or a certificate in like form;

(3) An official certificate given in accordance with paragraph (1) may be given in evidence in a prosecution under these Regulations and shall be *prima facie* evidence of the matters contained therein, until the contrary is shown.

18. Where a sample of a product, article or substance is taken by an authorised officer in pursuance of these Regulations for analysis by the approved examiner, and where the seller, owner or person in apparent charge or control of such item requests in writing the results of such analysis, the request shall be made to the health board in whose area the sample was taken and the health board shall comply with such request.

19. (1) A person who fails to comply with these Regulations (other than Regulations 14(2), 15, 16, 17, or 18) is guilty of an offence;

(2) A person who falsely represents himself or herself to be an authorised officer is guilty of an offence;

(3) A person who -
(a) obstructs or interferes with an authorised officer in the exercise of the officer's powers under Regulation 14,
(b) fails to comply with a request from an authorised officer under Regulation 14, or
(c) makes a statement to an authorised officer which the person knows is false or misleading,

is guilty of an offence;

(4) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding €1,900 or to imprisonment for a term not exceeding six months, or both;

(5) Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act, 1851, proceedings for an offence under these Regulations may be instituted within 12 months from the date of the offence or any time within twelve months from the date on which knowledge of the commission of the offence came to the attention of an authorised officer.

20. Where an offence under these Regulations is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to be attributable to any neglect on the part of any director, manager, secretary or any other officer of such body or a person who was purporting to act in any such capacity, such person is also guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the same offence.

21. (1) Any person who forges, or utters knowing it to be forged, a certificate or other document purporting to be issued, granted or given under these Regulations (hereafter in this Regulation referred to as "a forged document"), is guilty of an offence;

(2) Any person who alters with intent to defraud or deceive, or who utters knowing it to be so altered, a certificate or other document issued, granted or given under these Regulations (hereafter in this Regulation referred to as "an altered document"), is guilty of an offence;

(3) Any person who, without lawful authority, has in his or her possession a forged document or an altered document is guilty of an offence;

(4) Any person who, with intent to defraud or deceive -

(a) tampers with any thing so as to procure that any sample taken pursuant to these Regulations does not correctly represent the substance sampled, or

(b) tampers or interferes with any sample taken under these Regulations,

is guilty of an offence.

22. (1) A notice or other document under these Regulations shall, subject to paragraph (2), be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways :

(a) by delivering it to the person,

(b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address,

(c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address,

(d) where the address at which the person ordinarily resides cannot be ascertained by reasonable inquiry and the notice, direction or other document relates to land, by delivering it to some person over 16 years of age resident or employed on the land or by affixing it in a conspicuous position on or near the land;

(2) It shall not be lawful for a person at any time during the period of 12 months after a direction or other document is affixed under sub-paragraph (d) of

paragraph (1) to remove, damage or deface the notice, direction or other document without lawful authority;

(3) For the purposes of this Regulation, a company within the meaning of the Companies Acts, 1963 to 1999, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

23. An offence under these Regulations may be prosecuted by -

(1) the health board, within whose functional area the offence was committed, or

(2) the Food Safety Authority of Ireland.

GIVEN under the Official Seal of the Minister for Health and Children this 8th day of March, 2002.



Michael Martin, T.D.

Minister for Health and Children

Explanatory Note

(This is not part of the instrument and does not purport to be a legal interpretation).

These Regulations give effect to Commission Decision 2002/80/EC of 4 February 2002 laying down special conditions on the import from Turkey of figs, hazelnuts and pistachios and certain products derived thereof.

The effect of these Regulations is to lay down the general provisions for the importation of figs, hazelnuts and pistachios and certain products derived thereof originating in or consigned from Turkey.