

Statutory Instrument 1992 No. 3236

Aflatoxins in Nuts, Nut Products, Dried Figs and Dried Fig Products Regulations 1992

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STATUTORY INSTRUMENTS

1992 No. 3236

FOOD

Aflatoxins in Nuts, Nut Products, Dried Figs and Dried Fig Products Regulations 1992

Made 16th December 1992
Laid before Parliament 18th December 1992
Coming into force 31st December 1992

The Minister of Agriculture, Fisheries and Food, the Secretary of State for Health and the Secretary of State for Wales, acting jointly, in relation to England and Wales, and the Secretary of State for Scotland in relation to Scotland, in exercise of the powers conferred on them by sections 4(1), 6(4), 16(1)(a), (b) and (f), 18, 26(1) and (3), 31(1) and (2)(b), (c) and (f) and 48 of the Food Safety Act 1990^[1] and of all other powers enabling them in that behalf, hereby make the following Regulations, after consultation in accordance with section 48 of the said Act with such organisations as appear to them to be representative of interests likely to be substantially affected by the Regulations:

Title and commencement

1. These Regulations may be cited as the Aflatoxins in Nuts, Nut Products, Dried Figs and Dried Fig Products Regulations 1992 and shall come into force on 31st December 1992.

Interpretation

2.—(1) In these Regulations, unless the context otherwise requires—
"the Act" means the Food Safety Act 1990;
"aflatoxins" means all or any of aflatoxin B1, aflatoxin B2, aflatoxin G1 and aflatoxin G2, as, in each case, more particularly specified by its full chemical name in Schedule 1;
"authorised officer" means an authorised officer of a food authority (including, where appropriate, a food authority being a receiving authority under Part II of Schedule 3);
"Council Regulation" means Council Regulation (EEC) No. 2658/87^[2] as amended^[3];
"designated place" means any place reasonably designated by an authorised officer for the purposes of inspection of food under these Regulations;
"dried figs" means the fruit which falls within category 0804 20 90 of the combined nomenclature subheadings of the Council Regulation;
"dried fig product" means any food at least half of which consists (by weight) of dried figs, except that for the purposes of regulations 7, 9(1)(b) and (e) and 10(2), and Schedule 4, it shall also include any food containing dried figs in a lesser amount;
"food authority" does not include the appropriate Treasurers referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and the Middle Temple);
"importer", in relation to imported nuts, nut products, dried figs, dried fig products or any of them includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of the nuts, nut products, dried figs, dried fig products or any of them or is in any way entitled to the custody or control of them, and "import" shall be construed accordingly;
"nuts" means the nuts listed in column 1 of Schedule 2, the corresponding Council Regulation combined nomenclature subheadings for which appear in column 2 of Schedule 2;
"nut product" means any food at least half of which consists (by weight) of nuts or of any substance (save where that substance consists exclusively of edible oil) derived from nuts, and for the purposes of regulations 7, 9(1)(b) and (e) and 10(2), and Schedule 4, it shall also include (a) any food consisting of nuts or of any substance (including edible oil) derived from nuts in a lesser amount, and (b) edible oils derived wholly or partly from nuts;
"processing" shall not include any method of treatment which reduces the proportion of total aflatoxins in any consignment merely by blending or mixing that consignment with another which has a lower level of aflatoxins;
"sell" includes offer or expose for sale or have in possession for sale, "sale" shall be construed accordingly and, in relation to nuts, nut products, dried figs, dried fig products or any of them, "consumer sale" means a sale of them—
 (a) to the ultimate consumer, or
 (b) in packaging in which they are ready for delivery to the ultimate consumer;
"total aflatoxins" means the sum of the concentrations of aflatoxins;
"ultimate consumer" has the meaning assigned to it by the Food Labelling Regulations 1984^[4].

(2) Any reference in these Regulations to a numbered regulation or Schedule shall, unless the reference is to a regulation of, or Schedule to, specified Regulations, be

construed as a reference to the regulation or Schedule so numbered in these Regulations.

Scope

3. These Regulations do not apply to any nuts, nut products, dried figs, dried fig products or any of them which are not intended for sale for human consumption.

Certification of what constitutes a consignment

4.—(1) Subject to the provisions of paragraph (2) below, the importer into Great Britain from a country outside the European Economic Community of any nuts, nut products, dried figs or dried fig products which are the subject of these Regulations shall, in relation to them, give to an authorised officer a certificate (or certificates) identifying the consignment (or consignments) that those nuts, nut products, dried figs or dried fig products constitute, and for the purposes of these Regulations "consignment" shall be taken to be such certificated amount (or amounts) of nuts, nut products, dried figs or dried fig products.

(2) In certifying what is to constitute a consignment for the purposes of these Regulations, an importer shall—

- (a) limit each consignment—
 - (i) to an amount not exceeding 25,000 kilograms,
 - (ii) to only one of the categories—
 - (aa) nuts,
 - (bb) nut products,
 - (cc) dried figs,
 - (dd) dried fig products; and
- (b) account for all of the nuts, nut products, dried figs or dried fig products that he is, at the time of certification, importing or intending to import.

Importation procedure

5.—(1) No person shall import any consignment of nuts, nut products, dried figs and dried fig products or any of them into Great Britain from a country outside the European Economic Community except—

- (a) through an authorised place of entry designated under regulation 6; and
- (b) in accordance with the procedure set out in either Part I or Part II of Schedule 3.

(2) No person shall sell any nut, nut product, dried fig or dried fig product from a consignment which has been imported in contravention of paragraph (1) above.

Authorised places of entry

6.—(1) The Ministers may by notice published in the London Gazette (in relation to a place in England and Wales) or in the Edinburgh Gazette (in relation to a place in Scotland) designate a place of entry as an authorised place of entry for the purposes of these Regulations either(a)generally, or (b)specifically, in relation to a class of nuts, nut products, dried figs and dried fig products or any of them specified in the notice.

(2) The Ministers may also, by authorisation in writing, designate a place of entry as an authorised place of entry for a particular consignment of nuts, nut products, dried figs, dried fig products or any of them specified in the authorisation.

Consumer sales

7. No person shall make a consumer sale of any nut, nut product, dried fig, dried fig product or any of them which, when analysed using a method which complies with the performance parameters set out at paragraph 5 of Schedule 4, has a level of

total aflatoxins of more than 4 micrograms per kilogram.

Duties of authorised officers

8.—(1) In carrying out any inspection under either paragraphs 2 or 3 of Part I, or paragraph 3 of Part II, of Schedule 3, an authorised officer shall take all reasonable steps—

- (a) to ensure that the transport of the consignment and its placing on the market is not unduly delayed, and
- (b) to avoid causing any delays that might adversely affect the quality of the nuts, nut products, dried figs and dried fig products, or any of them, in the consignment.

(2) Where notice is given to an importer under paragraph 3(2) of Part I of Schedule 3 requiring the destruction or disposal of a consignment, an authorised officer shall make an endorsement on any papers accompanying the consignment, so as to indicate clearly the requirement under the notice.

(3) An endorsement made under paragraph (2) above may at any time be deleted or amended by an authorised officer and it shall be so deleted if the notice is rescinded by a magistrates' court order (or in Scotland, by a sheriff) under paragraph 5(b) of Part I of Schedule 3 that the notice shall no longer have effect.

Offences and enforcement

9.—(1) Any person who—

- (a) imports a consignment of nuts, nut products, dried figs and dried fig products or any of them in contravention of any requirement imposed by or under these Regulations or sells any nut, nut product, dried fig or dried fig product from a consignment that has been so imported, or
- (b) makes a consumer sale of any nut, nut product, dried fig, dried fig product or any of them in contravention of any requirement imposed by or under these Regulations, or
- (c) in dealing with a consignment of nuts, nut products, dried figs and dried fig products or any of them, does not do so in accordance with a requirement imposed by or under these Regulations in relation to such dealing, or
- (d) uses a document which he knows to be false in a material particular or recklessly makes a statement or uses a document which is false in a material particular in connection with the importation of a consignment of nuts, nut products, dried figs, dried fig products or any of them, or
- (e) uses a document which he knows to be false in a material particular or recklessly makes a statement or uses a document which is false in a material particular in connection with the consumer sale of nuts, nut products, dried figs, dried fig products or any of them,

shall be guilty of an offence and liable—

- (i) on summary conviction to a fine not exceeding the statutory maximum, or
- (ii) on conviction on indictment to a fine.

(2) Subject to paragraph (3) below, the provisions of these Regulations shall be enforced by any food authority in whose area any nuts, nut products, dried figs or dried fig products the subject of these Regulations are found.

(3) The provisions of these Regulations shall be enforced by any port health authority in whose district any nuts, nut products, dried figs or dried fig products the subject of these Regulations are found.

Defences

10.—(1) In any proceedings for an offence against these Regulations it shall be a

defence for the person charged to prove that the food, in respect of which the offence is alleged to have been committed—

- (a) was intended for export and complied with the importing country's domestic food legislation relevant to the alleged offence; or
- (b) was intended for export and was prepared and labelled for sale before 31st December 1992.

(2) In any proceedings for an offence against these Regulations consisting of the consumer sale of nuts, nut products, dried figs or dried fig products or any of them containing a level of total aflatoxins of more than 4 micrograms per kilogram of the food, it shall be a defence to show that the nuts or dried figs, or in the case of nut products or dried fig products the nut or dried fig element of such products, in relation to which the offence is alleged to have been committed comes from a lot or batch of nuts or dried figs that has previously been certified by an analytical laboratory (further to sampling and analysis carried out in accordance with Schedule 4) as containing a level of total aflatoxins of no more than 4 micrograms per kilogram of, as the case may be, nuts or dried figs.

(3) For the purposes of paragraph (2) above, "analytical laboratory" means any laboratory which—

- (a) was, at the time of giving the certificate in question, a participant in a proficiency testing scheme which conformed to the International Harmonised Protocol for the Proficiency Testing of (Chemical) Analytical Laboratories prepared, jointly, by the International Union of Pure and Applied Chemistry, the International Standards Organisation and the AOAC International, and
- (b) in the round of testing conforming to that Protocol which took place closest to the date of performing the analysis on the basis of which the certificate in question was given, achieved Z scores (as defined in that Protocol) of between-3 and + 3 (inclusive).

Application of various provisions of the Food Safety Act 1990

11.—(1) The following provisions of the Act shall apply for the purposes of these Regulations as they apply for the purposes of section 8, 14 or 15 of the Act and, unless the context otherwise requires, any reference in them to the Act shall be construed for the purposes of these Regulations as a reference to these Regulations—

- (a) section 2 (extended meaning of "sale" etc.);
- (b) section 3 (presumption that food is intended for human consumption);
- (c) section 20 (offences due to fault of another person);
- (d) section 21 (defence of due diligence);
- (e) section 30(8) (which relates to documentary evidence);
- (f) section 33 (obstruction etc. of officers);
- (g) section 36 (offences by bodies corporate);
- (h) section 44 (protection of officers acting in good faith).

(2) Section 8(3) (which makes presumptions in the case of batches etc. of food) of the Act shall apply to food which it is an offence to sell under these Regulations as it applies to food which fails to comply with food safety requirements.

(3) Section 9 (inspection and seizure of suspected food) of the Act shall apply for the purposes of these Regulations as if food which it is an offence to sell under them were food which failed to comply with food safety requirements.

(4) Section 30 (analysis etc. of samples) of the Act shall apply to these Regulations subject to such modifications as are necessary for the purposes of these Regulations.

In witness whereof the Official Seal of the Minister of Agriculture, Fisheries and Food is hereunto affixed on
14th December 1992.

John Selwyn Gummer

Minister of Agriculture, Fisheries and Food

Signed by authority of the Secretary of State for Health:

Cumberlege

Parliamentary Under-Secretary of State,
Department of Health

15th December 1992

David Hunt

Secretary of State for Wales

16th December 1992

Hector Munro

Parliamentary Under-Secretary of State,
Scottish Office

14th December 1992

Notes:

[1] [1990 c. 16. back](#)

[2] OJ No. L256, 7.9.87, p.1. [back](#)

[3] The relevant amendment is Council Regulation (EEC) No. 2505/92 (OJ No. L267, 14.9.92, p.1). [back](#)

[4] S.I. 1984/1305, to which there are no relevant amendments. [back](#)