Statutory Instrument 2002 No. 183

The Food and Animal Feedingstuffs (Products of Animal Origin from China) (Control) (England) Regulations 2002

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STATUTORY INSTRUMENTS

2002 No. 183

FOOD, ENGLAND

AGRICULTURE, ENGLAND

The Food and Animal Feedingstuffs (Products of Animal Origin from China) (Control) (England) Regulations 2002

Made	*31st January 2002*
Laid before Parliament	*1st February 2002*
Coming into force	*2nd February 2002*

The Secretary of State, being a Minister designated[1] for the purposes of section 2(2) of the European Communities Act 1972[2] in relation to the common agricultural policy of the European Community, acting in exercise of the powers conferred on him by that section and of all other powers enabling him in that behalf, makes the following Regulations:

Title, commencement and extent

1. - (1) These Regulations may be cited as the Food and Animal Feedingstuffs (Products of Animal Origin from China) (Control) (England) Regulations 2002 and shall come into force on 2nd February 2002.

(2) These Regulations extend to England only.

Interpretation

2. - (1) In these Regulations -

"the Act" means the Food Safety Act 1990 and, save where otherwise indicated and subject to paragraph (2), any expression used both in these Regulations and in the Act has the meaning it bears in the Act;

"the Commission Decision" means Commission Decision 2002/69/EC concerning certain protective measures with regard to the products of animal origin imported from China[3];

"food authority" includes neither the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and Middle Temple) nor a port health authority;

"free circulation" has the same meaning as in Article 23.2, as read with Article 24, of the Treaty establishing the European Community;

"port health authority" means a port health authority for a port health district constituted under section 2(4) of the Public Health (Control of Disease) Act 1984[4];

"relevant product of animal origin" means a product of animal origin falling within either of the following descriptions -

(a) products of animal origin originating in, or consigned from, China, and intended for human consumption, or animal feed use, except for any such product which is of a kind to which the derogation contained in Article 2.2 of the Commission Decision (which is concerned with casings and certain fishery products) applies; and

(b) products which contain any product falling within the description given in paragraph (a) of this definition.

(2) Any expression used both in these Regulations and in the Commission Decision has the same meaning in these Regulations as it bears in that Decision.

Disapplication

3. Regulation 4 shall not apply in relation to any relevant product of animal origin to which the derogation contained in Article 3.1 of the Commission Decision (which is concerned with the importation of consignments of products of animal origin which left China prior to 31st January 2002 and arrive in England on or before 13th March 2002) applies.

Prohibition of importation and offence

4. - (1) Subject to paragraph (2) and regulation 3, no person shall import into England any relevant product of animal origin.

(2) Paragraph (1) shall not be taken to prohibit the bringing into England from another member State of the European Community of any relevant product of animal origin which is in free circulation in that member State.

(3) Any person who knowingly contravenes paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months.

Enforcement

5. - (1) Subject to paragraph (2), it shall be the duty of each port health authority to execute and enforce these Regulations within its district.

(2) In relation to any place which is not situated in the district of a port health authority these Regulations shall be executed and enforced by the food authority within whose area that place is situated.

(3) For the purposes of the exercise of the duty referred to in paragraph (1) or, as the case may be, (2), an authorised officer of the authority concerned -

(a) shall have the same powers of entry as are bestowed on an authorised officer of an enforcement authority by section 32 of the Act for purposes connected with the Act or Regulations or Orders under the Act, and shall also have, in relation to any business producing material for animal feed use, the same power as an authorised officer of an enforcement authority has under that section in relation to a food business; and

(b) shall exercise that duty in accordance with Article 4 of the Commission Decision.

(4) Each port health authority and food authority shall give such assistance and information to the Secretary of State and the Food Standards Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

Application of various provisions of the Act

6. - (1) The following provisions of the Act shall apply for the purposes of these Regulations and unless the context otherwise requires any reference in them to the Act or Part thereof shall be construed as a reference to these Regulations -

section 20 (offences due to fault of another person);

section 33(1) (obstruction etc. of officers);

section 35(1) (punishment of offences) in so far as it relates to offences

under section 33 as applied by this paragraph; and

section 44 (protection of officers acting in good faith).

(2) Subject to paragraph (3), section 9 of the Act (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if it read as follows -

" **9.** - (1) An authorised officer of a food authority or a port health authority may at all reasonable times inspect any relevant product of animal origin which -

(a) has been sold or is offered or exposed for sale; or

(b) is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale.

(2) Subsections (3) to (8) shall apply where, whether or not on an inspection carried out under subsection (1), it appears to an authorised officer that any relevant product of animal origin has been imported into England in contravention of regulation 4(1) of the Food and Animal Feedingstuffs (Products of Animal Origin

from China) (Control) (England) Regulations 2002.

(3) The authorised officer may either -

(a) give notice to the person in charge of the product that, until the notice is withdrawn, the product or any specified portion of it -

(i) is not to be used for human consumption or, as the case may be, put to animal feed use, and

(ii) either is not to be removed or is not to be removed except to some place specified in the notice; or

(b) seize the product and remove it in order to have it dealt with by a justice of the peace;

and any person who knowingly contravenes the requirements of a notice under paragraph (a) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where the authorised officer exercises the powers conferred by subsection (3)(a) above, he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that the product has not been imported in contravention of regulation 4(1) of the aforesaid Regulations and -

(a) if he is so satisfied, shall forthwith withdraw the notice;

(b) if he is not so satisfied, shall seize the product and remove it in order to have it dealt with by a justice of the peace.

(5) Where an authorised officer exercises the powers conferred by subsection (3)(b) or (4)(b) above, he shall inform the person in charge of the product of his intention to have it dealt with by a justice of the peace and -

(a) any person who under regulation 4(3) of the aforesaid Regulations might be liable to a prosecution in respect of the product shall, if he attends before the justice of the peace by whom the product falls to be dealt with, be entitled to be heard and to call witnesses; and

(b) that justice of the peace may, but need not, be a member of the court before which any person is proceeded against for an offence consisting of a contravention of regulation 4(1) of those Regulations in relation to that product.

(6) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any product falling to be dealt with by him under this section has been imported in contravention of regulation 4(1) of the aforesaid Regulations, he shall condemn the product and order -

(a) the product to be destroyed or to be so disposed of as to prevent it from being used for human consumption or, as the case may be, put to animal feed

use; and

(b) any expenses reasonably incurred in connection with the destruction or disposal to be defrayed by the owner of the product.

(7) If a notice under subsection (3)(a) above is withdrawn, or the justice of the peace by whom any product falls to be dealt with under this section refuses to condemn it, the food authority or, as the case may be, port health authority, shall compensate the owner of the product for any depreciation in its value resulting from the action taken by the authorised officer.

(8) Any disputed question as to the right to or the amount of any compensation payable under subsection (7) above shall be determined by arbitration.".

(3) The expressions "food authority", "port health authority", "relevant product of animal origin", "for human consumption" and "animal feed use", which are used in section 9 of the Act so far as it applies for the purposes of these Regulations by virtue of paragraph (2), shall, for those purposes, bear the meanings that those expressions respectively bear in these Regulations.

Signed by authority of the Secretary of State for Health

Yvette Cooper
Parliamentary Under Secretary of State, Department of Health

31st January 2002

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, which extend to England only, implement Commission Decision 2002/69/EC concerning certain protective measures with regard to the products of animal origin imported from China (OJ No. L30, 31.1.2002, p.50).

These Regulations define "relevant product of animal origin" (regulation 2); prohibit, with exceptions which are specified respectively in the definition of "relevant product of animal origin" and in regulation 3, their importation (regulation 4); specify the enforcement authorities (regulation 5); and apply with modifications, for the purposes of the Regulations, certain provisions of the Food Safety Act 1990 (regulation 6).

No Regulatory Impact Assessment has been prepared in respect of these Regulations.

Notes:

[1] S.I. 1972/1811.back

[2] 1972 c.68.back

[3] OJ No. L30, 31.1.2002, p.50.back

[4] 1984 c.22.back

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