Statutory Instrument 2002 No. 334

The Food (Star Anise from Third Countries) (Emergency Control) (England) Order 2002

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STATUTORY INSTRUMENTS

2002 No. 334

FOOD, ENGLAND

The Food (Star Anise from Third Countries) (Emergency Control) (England) Order 2002

Made	*14th February 2002*
Laid before Parliament	*15th February 2002*
Coming into force	*16th February 2002*

Whereas it appears to the Secretary of State that the import of certain Star Anise consigned from countries which are not Member States of the European Community may, save as permitted by the following Order, involve imminent risk of injury to health;

Now therefore the Secretary of State, in exercise of the powers conferred on him by sections 13(1) and 48(1) of the Food Safety Act 1990[1], and of all other powers enabling him in that behalf, having regard, in accordance with section 48(4A) of that Act to relevant advice given by the Food Standards Agency, makes the following Order:

Title, commencement and extent

1. - (1) This Order may be cited as the Food (Star Anise from Third Countries) (Emergency Control) (England) Order 2002 and shall come into force on 16th February 2002.

(2) This Order extends to England only.

Interpretation
2. In this Order -

"the Act" means the Food Safety Act 1990;

"the Commission Decision" means Commission Decision 2002/75/EC laying down special conditions on the import from third countries of Star Anise[2];

"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;

"Japanese Star Anise" means Star Anise (*Illicium anisatum*, also known as *Illicium religiosum, Illicium japonicum, shikimmi and skimmi*);

"member State" means a member State of 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[3];

"Star Anise for human consumption" means Star Anise (*Illicium verum*, also known as Chinese Star Anise or Chinese Badian) falling within CN code 0909 10 00 which is intended for human consumption or for use as an ingredient in foodstuffs;

and any term used in the above definition of "Star Anise for human consumption" has the same meaning as in the Commission Decision.

Prohibitions of import
3. - (1) No person shall import into England any Star Anise for human consumption which has been consigned from a country which is not a member State, except in accordance with the conditions in Article 1.1 and the second sentence of Article 1.2 of the Commission Decision.

(2) Paragraph (1) above shall not be taken to prohibit the bringing into England from another member State of Star Anise for human consumption which is in free circulation in that member State.

(3) No person shall import into England any Japanese Star Anise which has been consigned from a country which is not a member State if it -

(a) is intended for use for human consumption; or

(b) does not bear a label stating that it is not fit for human consumption.

Enforcement
4. - (1) Subject to paragraph (2), it shall be the duty of each port health authority to execute and enforce this Order within its district.

(2) In relation to any place which is not situated in the district of a port health

authority, this Order shall be executed and enforced by the food authority for the area in which that place is situated.

(3) 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 for the purpose of carrying out their duties under section 13 of the Act in connection with this Order.

Application of various provisions of the Act
5. - (1) The following provisions of the Act shall apply for the purposes of this Order and any reference in those provisions to the Act or part thereof shall be construed for the purposes of this Order as a reference to this Order -

(a) section 3 (presumptions that food intended for human consumption);

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

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

(d) section 35(1) (punishment of offences) in so far as it relates to offences under section 33(1) as applied by sub-paragraph (b) above; and

(e) 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 this Order 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 Star Anise for human consumption or Japanese Star Anise 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 Star Anise for human consumption or Japanese Star Anise has been imported into England in contravention of article 3(1) or, as the case may be, 3(3), of the Food (Star Anise from Third Countries) (Emergency Control) (England) Order 2002.

(3) The authorised officer may either -

(a) give notice to the person in charge of the Star Anise concerned that, until the notice is withdrawn, the Star Anise or any specified quantity of it -

(i) is not to be used for human consumption, 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 Star Anise 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 Star Anise has not been imported in contravention of article 3(1) or, as the case may be, 3(3) of the aforesaid Order and -

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

(b) if he is not so satisfied, shall seize the Star Anise 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 Star Anise of his intention to have it dealt with by a justice of the peace and -

(a) any person who under section 35(2) of this Act might be liable to a prosecution in respect of the Star Anise shall, if he attends before the justice of the peace by whom the Star Anise 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 article 3(1) or, as the case may be, 3(3) of the aforesaid Order in relation to that Star Anise.

(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 Star Anise falling to be dealt with by him under this section has been imported in contravention of article 3(1) or, as the case may be, 3(3) of the aforesaid Order, he shall condemn the Star Anise and order -

(a) the Star Anise to be destroyed or to be so disposed of as to prevent it from being used for human consumption; and

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

(7) If a notice under subsection (3)(a) above is withdrawn, or the justice of the peace by whom any Star Anise 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 Star Anise 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", "Star Anise for human consumption" and "Japanese Star Anise", which are used in section 9 of the Act so far as it applies for the purposes of this Order by virtue of paragraph (2) shall, for those purposes, bear the meanings that those expressions respectively bear in this Order.

Signed by authority of the Secretary of State for Health

Yvette Cooper
Parliamentary Under Secretary of State, Department of Health

14th February 2002

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 13 of the Food Safety Act 1990 in consequence of it appearing to the Secretary of State for Health that the importation into England of certain Star Anise consigned from countries which are not member States of the European Community may involve imminent risk of injury to health.

The Order also implements, in relation to England, Commission Decision 2002/75/EC laying down special conditions on the import from third countries of Star Anise (OJ No. L33, 2.2.2002, p.31).

The Order -

(a) prohibits the importation of "Star Anise for human consumption" consigned from countries which are not member States of the European Community except where it is accompanied by health certificates completed by the competent authority of the exporting third country and a report on the results of official sampling and analysis undertaken in that country, the importation takes place only through specified points of entry and the consignment is identified with a code corresponding with that specified on the health certificate and in the sampling and analysis results (articles 2 and 3(1));

(b) prohibits the importation of "Japanese Star Anise" intended for human consumption or which is not labelled to the effect that it is unfit for such use (articles 2 and 3(2));

(c) specifies the enforcement authorities (article 4); and

(d) applies, with modifications, provisions of the 1990 Act (article 5).

No regulatory impact assessment has been prepared for this Order.

Notes:

[1] 1990 c.16; functions under the 1990 Act relating to emergency control orders,

which were originally exercisable, in relation to Great Britain, by the Minister of Agriculture, Fisheries and Food or the Secretary of State, became exercisable by the Secretary of State alone by virtue of paragraph 8 of Schedule 5 to the Food Standards Act 1999 (1999 c.28). In relation to Scotland, those functions were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (1998 c.46) as read with section 40(2) of the 1999 Act. In relation to Wales, those functions were transferred to the National Assembly for Wales by S.I. 1999/672 as read with section 40(3) of the 1999 Act. Paragraphs 11 and 21 of Schedule 5 to the 1999 Act amend respectively sections 13 and 48 of the 1990 Act.back

[2] OJ No. L33, 2.2.2002, p.31.back

[3] 1984 c.22.back

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