Statutory Instrument 2002 No. 773

The Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (England) Regulations 2002

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STATUTORY INSTRUMENTS

2002 No. 773

FOOD, ENGLAND

The Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (England) Regulations 2002

Made	*21st March 2002*
Laid before Parliament	*22nd March 2002*
Coming into force	*23rd March 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, in exercise of the powers conferred on him by that section, makes the following Regulations:

Title, commencement and extent

1. - (1) These Regulations may be cited as the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (England) Regulations 2002 and shall come into force on 23rd March 2002.

(2) These Regulations extend to England only.

Interpretation

2. - (1) ln these Regulations -

"the Act" means the Food Safety Act 1990[3] 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 2002/80/EC imposing special conditions on the import of figs, hazelnuts and pistachios and certain products derived thereof originating in or consigned from Turkey[4] as amended by Commission Decision 2002/233/EC[5];

"controlled Turkish products" means Turkish products which are intended for human consumption or to be used as an ingredient in foodstuffs;

"Directive 98/53/EC" means Commission Directive 98/53/EC laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs[6];

"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[7]; and

"Turkish products" means products of the categories to which Article 1.1 of the Commission Decision applies and which originate in or are consigned from Turkey.

(2) Any term used in the definition of "controlled Turkish products" or "Turkish products" in paragraph (1) has the same meaning as in the Commission Decision.

Prohibition of import

3. - (1) Subject to paragraph (3), no person shall import into England any controlled Turkish products unless -

(a) the conditions specified in Article 1.1 and 1.3 of the Commission Decision are satisfied in relation to those products; or

(b) the derogation contained in Article la of the Commission Decision (which is concerned with consignments which left Turkey prior to 11th March 2002) is satisfied in relation to them.

(2) Subject to paragraph (3), no person shall import into England any controlled Turkish products, except through a point of entry listed in Annex II to the Commission Decision.

(3) Neither paragraph (1) nor paragraph (2) shall be taken to prohibit the import into England from a member State of any controlled Turkish products which are in free circulation in that State.

(4) For the purposes of this regulation, any Turkish products shall be presumed until the contrary is proved to be controlled Turkish products.

(5) Any person who knowingly contravenes paragraph (1) or (2) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months.

Enforcement

4. - (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 for the area in which 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 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 made under the Act.

(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 etc. of various provisions of the Act

5. - (1) The following provisions of the Act shall apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part thereof shall be construed as a reference to these Regulations -

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

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

(c) section 33(2), with the modification that the reference to "any such requirement as is mentioned in subsection 1(b) above" shall be deemed to be a reference to any such requirement as is mentioned in section 33(1)(b) as applied by sub-paragraph (b);

(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);

(e) section 35(2) and (3), in so far as it relates to offences under section 33(2) as applied by sub-paragraph (c);

(f) section 36 (offences by bodies corporate); and

(g) 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 controlled Turkish products which -

(a) have been sold or are offered or exposed for sale; or

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

(2) Subsections (3) to (8) below shall apply where, whether or not on an inspection carried out under subsection (1) above, it appears to an authorised officer that any controlled Turkish products have been imported into England in contravention of regulation 3(1) or (2) of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (England) Regulations 2002.

(3) The authorised officer may either -

(a) give notice to the person in charge of the products that, until the notice is withdrawn, the products or any specified quantity of them -

(i) are not to be used for human consumption, and

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

(b) seize the products and remove them in order to have them 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 products have not been imported in contravention of regulation 3(1) or (2) of the above Regulations and -

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

(b) if he is not so satisfied, shall seize the products and remove them in order to have them 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 products of his intention to have them dealt with by a justice of the peace and -

(a) any person who under regulation 3(5) of the above Regulations might be liable to a prosecution in respect of the products shall, if he attends before the justice of the peace by whom the products fall 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 3(1) or (2) of the above Regulations in relation to those products.

(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 products falling to be dealt with

by him under this section have been imported in contravention of regulation 3(1) or (2) of the above Regulations, he shall condemn the products and order -

(a) the products to be destroyed or to be so disposed of as to prevent them 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 products.

(7) If a notice under subsection (3)(a) above is withdrawn, or the justice of the peace by whom any products fall to be dealt with under this section refuses to condemn them, the food authority or, as the case may be, port health authority, shall compensate the owner of the products for any depreciation in their 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.

(9) For the purposes of this section, any Turkish products shall be presumed until the contrary is proved to be controlled Turkish products.".

(3) The expressions "controlled Turkish products", "food authority", "for human consumption", "port health authority" and "Turkish products", 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.

(4) Section 2 of the Act (extended meaning of "sale" etc.) shall apply in relation to section 9 of the Act so far as it applies for the purposes of these Regulations by virtue of paragraph (2).

(5) Section 29 of the Act (procurement of samples) shall apply for the purposes of these Regulations with the modifications that -

(a) for the words "an enforcement authority" there shall be substituted the words "a food authority or as the case may be a port health authority";

(b) for subsection (b)(ii) there shall be substituted the following provision -

" (ii) is found by him on or in any premises which he is authorised to enter by virtue of regulation 4(3) of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (England) Regulations 2002;";

(c) the power to take samples under subsections (b) and (d) shall be limited to the taking of samples in accordance with the methods of taking samples described or referred to in Annex I to Directive 98/53/EC;

(d) subsection (c) shall be omitted; and

(e) for the words "any of the provisions of this Act or of regulations or orders made under it" in subsection (d) there shall be substituted the words "the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (England) Regulations

2002".

(6) Where, pursuant to section 29(b) of the Act as applied by paragraph (5), an authorised officer has taken a sample of any products he believes to be controlled Turkish products, he shall ensure that -

(a) the sample is prepared in accordance with -

(i) paragraphs 1.1, 2 and 3 of Annex II to Directive 98/53/EC,

and

(ii) in the case of whole nuts, paragraph 1.2 of that Annex;

(b) an analysis of the sample is carried out in accordance with methods of analysis which -

(i) so far as practicable, comply with paragraphs 1 and 2 of the Annex to Council Directive 85/591/EEC concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption[8], and

(ii) meet the criteria specified in paragraph 4.3 of Annex II to Directive 98/53/EC as read with the notes thereto;

(c) an analysis of the sample is carried out by a laboratory which complies with Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs[9]; and

(d) the reporting of the result of the analysis of that sample -

(i) makes use of the definitions in paragraph 4.1 of Annex II to Directive 98/53/EC, and

(ii) is in accordance with paragraph 4.4 of that Annex.

Signed by authority of the Secretary of State for Health

Yvette Cooper
Parliamentary Under Secretary of State, Department of Health

21st March 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to England only, implement Commission Decision 2002/80/EC imposing special conditions on the import of figs, hazelnuts and pistachios and certain products derived thereof originating in or consigned from Turkey (OJ No. L34, 5.2.2002, p.26) as amended by Commission Decision 2002/233/EC (OJ No. L78, 21.3.2002, p.14). The categories of products which are subject to those conditions are specified in Article 1.1 of Decision 2002/80/EC.

The Regulations -

(a) prohibit the importation of any "controlled Turkish products" (defined in regulation 2(1)), except where -

(i) they are accompanied by a Turkish Government health certificate and the results of official sampling and analysis, the importation takes place only through a specified point of entry and the consignment is identified with a code corresponding with that specified on the health certificate and on the accompanying report containing the sampling and analysis results, or

(ii) (even though they are not accompanied by a Turkish Government health certificate or the results of official sampling and analysis) they left Turkey before 11th March 2002, the operator shows, by means of sampling and analysis in the prescribed manner, that the levels of aflatoxin B1 and total aflatoxin in the products do not exceed the maximum permitted levels and the importation takes place only through a specified point of entry (regulations 2 and 3);

(b) specify the enforcement authorities (regulation 4); and

(c) apply, with modifications, provisions of the Food Safety Act 1990 (regulation 5).

No regulatory impact assessment has been prepared in relation to these Regulations.

Notes:

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

[2] 1972 c. 68.back

[3] 1990 c. 16.back

[4] OJ No. L34, 5.2.2002, p. 26.back

[5] OJ No. L78, 21.3.2002, p. 14.back

[6] OJ No. L201, 17.7.1998, p. 93.back

[7] 1984 c. 22.back

[8] OJ No. L372, 31.12.85, p. 90.back

[9] OJ No. L290, 24.11.93, p. 14.back

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