Statutory Instrument 2002 No. 931

The Food (Jelly Confectionery) (Emergency Control) (England) Regulations 2002

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STATUTORY INSTRUMENTS

2002 No. 931

FOOD, ENGLAND

The Food (Jelly Confectionery) (Emergency Control) (England) Regulations 2002

Made	*3rd April 2002*
Laid before Parliament	*3rd April 2002*
Coming into force	*4th April 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 (Jelly Confectionery) (Emergency Control) (England) Regulations 2002 and shall come into force on 4th April 2002.

(2) These Regulations shall extend to England only.

Interpretation

2. - (1) In these Regulations -

"the Act" means the Food Safety Act 1990[3] and, save where otherwise indicated, any expression used both in these Regulations and in the Act has the same meaning as in the Act;

"commercial operation" does not include exporting;

"the Commission Decision" means Commission Decision 2002/247/EC suspending the placing on the market and import of jelly confectionery containing the food additive E425: Konjac[4];

"controlled jelly confectionery" means any jelly confectionery which contains E425: Konjac: (i) Konjac gum (ii) Konjac glucomannane and which is intended for human consumption;

"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;

"jelly confectionery" includes jelly mini-cups; and

"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[5].

(2) Any term used both in these Regulations and in the Commission Decision has the same meaning as in the Commission Decision.

Prohibitions

3. - (1) No person shall carry out any commercial operation with respect to any controlled jelly confectionery.

(2) For the purposes of paragraph (1), any jelly confectionery which contains E425: Konjac (i) Konjac gum (ii) Konjac glucomannane shall be presumed until the contrary is proved to be controlled jelly confectionery.

(3) No person shall use E425: Konjac (i) Konjac gum (ii) Konjac glucomannane in the manufacture of any jelly confectionery which is intended for human consumption.

(4) For the purposes of paragraph (3), any jelly confectionery shall be presumed until the contrary is proved to be intended for human consumption.

5) Any person who knowingly contravenes paragraph (1) or (3) 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, it shall be the duty of the food authority for the area in which that place is situated to execute and enforce these Regulations.

(3) For the purposes of enabling a port health authority or as the case may be a food authority to carry out its duty of executing and enforcing these Regulations, an authorised officer of that authority shall -

(a) have the same powers 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; and

(b) be subject to the same obligations as regards the procurement of samples under section 29 of the Act as are imposed on an authorised officer of an enforcement authority by regulations 6 to 8 of the Food Safety (Sampling and Qualifications) Regulations 1990[6] (in these Regulations referred to as "the 1990 Regulations"), with the modification that any reference in those regulations to section 29 of the Act shall be deemed to be a reference to that section as applied by regulation 5(5).

(4) Each port health authority and each 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 for the purposes of these Regulations as a reference to these Regulations -

(a) section 2 (extended meaning of "sale" etc.);

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

(c) section 30 (analysis etc. of samples) with the further modifications that -

(i) the reference to "section 29 above" in subsection (1) shall be deemed to be a reference to that section as applied by regulation 5(5), and

(ii) in the definition of "sample" in subsection (9) the reference to "regulations under section 31 below" shall be deemed to be a reference to regulation 4(3)(b);

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

(e) 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 (d);

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

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

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

(i) 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 jelly confectionery 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) below shall apply where, whether or not on an inspection carried out under subsection (1), it appears to an authorised officer that -

(a) any person has carried out commercial operations with respect to controlled jelly confectionery, in contravention of regulation 3(1) of the Food (Jelly Confectionery) (Emergency Control) (England) Regulations 2002, or

(b) any person has used E425: Konjac (i) Konjac gum (ii) Konjac glucomanne in the manufacture of any jelly confectionery which is intended for human consumption, in contravention of regulation 3(3) of those Regulations.

(3) The authorised officer may either -

(a) give notice to the person in charge of the jelly confectionery that, until the notice is withdrawn, the jelly confectionery 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 jelly confectionery 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 there has been no contravention of regulation 3(1) or (3) of the above Regulations in relation to the jelly confectionery and -

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

(b) if he is not so satisfied, shall seize the jelly confectionery 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 jelly confectionery of his intention to have it 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 prosecution in respect of the jelly confectionery shall, if he attends before the justice of the peace by whom the jelly confectionery 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 3(1) or (3) of the above Regulations in relation to that jelly confectionery.

(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 person has contravened regulation 3(1) or (3) of the above Regulations in relation to any jelly confectionery falling to be dealt with by him under this section, he shall condemn the jelly confectionery and order -

(a) the jelly confectionery 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 jelly confectionery.

(7) If a notice under subsection (3)(a) above is withdrawn, or the justice of the peace by whom any jelly confectionery 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 jelly confectionery 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.

(9) For the purposes of -

(a) subsection (2)(a) above, any jelly confectionery which contains E425: Konjac (i) Konjac gum (ii) Konjac glucomannane shall be presumed until the contrary is proved to be controlled jelly confectionery; and

(b) subsection (2)(b) above, any jelly confectionery shall be presumed until the contrary is proved to be intended for human consumption.".

(3) The expressions "controlled jelly confectionery", "food authority", "jelly confectionery", "port health authority" and "for human consumption", 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 in pursuance of regulation 4(3)(a) of the Food (Jelly Confectionery) (Emergency Control) (England) Regulations 2002;";

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

(d) 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 (Jelly Confectionery) (Emergency Control) (England) Regulations 2002".

(6) Regulation 9(1) of the 1990 Regulations shall apply for the purposes of these Regulations as if it read as follows -

" (1) Where a sample procured under section 29 of the Act as applied by regulation 5(5) of the Food (Jelly Confectionery) (Emergency Control) (England) Regulations 2002 has been analysed or examined in pursuance of regulation 4(3)(b) of those Regulations, the owner shall be entitled on request to be supplied with a copy of the certificate or analysis or examination by the authority which, by virtue of regulation 4(1) or (2) of those Regulations, has the duty of enforcing them.".

Signed by authority of the Secretary of State for Health

Hazel Blears
Parliamentary Under-Secretary of State, Department of Health

3rd April 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to England only, implement Commission Decision 2002/247/EC suspending the placing on the market and import of jelly confectionery containing the food additive E425: Konjac (OJ No. L84, 28.3.2002, p.69).

The Regulations -

(a) prohibit, first, the carrying out of commercial operations with regard to jelly confectionery which contains the food additive E425: Konjac and which is intended for human consumption and, second, the use of that additive in the manufacture of jelly confectionery which is intended for human consumption (regulations 2 and 3);

(b) specify the enforcement authorities and make consequential provisions relating to the execution and enforcement of the Regulations by those authorities (regulation 4); and

(c) apply, with modifications, provisions of the 1990 Act (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. L84, 28.3.2002, p.69.back

[5] 1984 c. 22.back

[6] S.I. 1990/2463, to which there are amendments not relevant to these Regulations.back

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