

Welsh Statutory Instrument 2002 No. 820 (W.96)

The Food (Peanuts from China) (Emergency Control) (Wales) Regulations 2002

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STATUTORY INSTRUMENTS

2002 No. 820 (W.96)

FOOD, WALES

The Food (Peanuts from China) (Emergency Control) (Wales) Regulations 2002

Made

25 March 2002

Coming into force

26 March 2002

The National Assembly for Wales, being 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 it by that section, and all other powers enabling it in that behalf, makes the following Regulations:

Citation, commencement and application

1. - (1) These Regulations may be cited as the Food (Peanuts from China) (Emergency Control) (Wales) Regulations 2002 and shall come into force on 26 March 2002.

(2) These Regulations extend to Wales only.

Interpretation

2. - (1) In 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 2002/79/EC imposing special conditions on the import of peanuts and certain products derived from peanuts originating in or consigned from China^[4] as amended by Commission Decision 2002/233/EC^[5];

"Chinese peanuts" means -

(a) peanuts falling within CN code 1202 10 90 or within CN code 1202 20 00;

(b) roasted peanuts falling within CN code 2008 11 92 (in immediate packs of a net content exceeding 1 kg) or roasted peanuts falling within CN code 2008 11 96 (in immediate packs of a net content not exceeding 1 kg); and

(c) peanuts falling within CN code 2008 11 94 (in immediate packs of a net content exceeding 1kg) or peanuts falling within CN code 2008 11 98 (in immediate packs of a net content not exceeding 1 kg),

originating in, or consigned from, China;

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

"Directive 95/53/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" does not include 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; 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^[7].

(2) Any term used in the definition of "Chinese peanuts" or "controlled Chinese peanuts" 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 Wales any controlled Chinese peanuts unless -

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

(b) the derogation contained in Article 1a of the Commission Decision (which is concerned with consignments which left China prior to 11th March 2002) is satisfied in relation to them.

(2) Subject to paragraph (3), no person shall import into Wales any controlled Chinese peanuts, but this shall not operate to prevent the transportation into Wales of such controlled Chinese peanuts lawfully imported through a point of entry listed in Annex II to the

Commission Decision in accordance with the Food (Peanuts from China) (Emergency Control) (England) Regulations 2002^[8].

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

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

(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 National Assembly for Wales 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 that subsection 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 Chinese peanuts 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) shall apply where, whether or not on an inspection carried out under subsection (1), it appears to an authorised officer that any controlled Chinese peanuts have been imported into Wales in contravention of regulation 3(1) or (2) of the Food (Peanuts from China) (Emergency Control) (Wales) Regulations 2002.

(3) The authorised officer may either -

(a) give notice to the person in charge of the peanuts that, until the notice is withdrawn, the peanuts 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 peanuts 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 peanuts 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 peanuts 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 peanuts 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 peanuts shall, if he attends before the justice of the peace by whom the peanuts 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 peanuts.

(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 peanuts 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 peanuts and order -

(a) the peanuts 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 peanuts.

(7) If a notice under subsection (3)(a) above is withdrawn, or the justice of the peace by whom any peanuts 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 peanuts 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 Chinese peanuts shall be presumed until the contrary is proved to be controlled Chinese peanuts."

(3) The expressions "Chinese peanuts", "controlled Chinese peanuts", "food authority", "for human consumption" and "port health authority", 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 (Peanuts from China) (Emergency Control) (Wales) 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 (Peanuts from China) (Emergency Control) (Wales) 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 peanuts he believes to be controlled Chinese peanuts, 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^[9], 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^[10]; 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 on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998^[11].

Rhodri Morgan

The First Minister of the National Assembly

25 March 2002

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations, which extend to Wales only, implement Commission Decision 2002/79/EC imposing special conditions on the import of peanuts and certain products derived from peanuts originating in, or consigned from, China (OJ No. L34, 5.2.2002, p.21) 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 2002/79/EC.

The Regulations prohibit the importation of "Chinese peanuts" (defined in regulation 2(1)), except where -

(a) they are accompanied by a Chinese Government health certificate and the results of official sampling and analysis, the peanuts are transported into Wales after being lawfully imported through a point of entry specified in Annex II to the Commission Decision 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

(b) (even though they are not accompanied by a Chinese Government health certificate or the results of official sampling and analysis) they left China 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, the peanuts are transported into Wales after being lawfully imported through a point of entry specified in Annex II to the Commission Decision (regulations 2 and 3). None of the points of entry specified in Annex II to the Commission Decision for the United Kingdom are in Wales.

The Regulations also

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

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

No regulatory appraisal has been prepared in relation to this Order.

These Regulations have been made in English only as, given the urgency with which it has had to be made, it was not reasonably practicable in the time available to produce a Welsh text.

Notes:

[1] S.I. 1999/2788.[back](#)

[2] 1972 (c. 68).[back](#)

[3] 1990 (c. 16).[back](#)

[4] OJ No. L34, 5.2.2002, p.21.[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] S.I. 2002/774[back](#)

[9] OJ No. L372, 31.12.85, p.90.[back](#)

[10] OJ No. L290, 24.11.93, p.14.[back](#)

[11] 1998 (c.38).[back](#)

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