Scottish Statutory Instrument 2002 No. 64

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

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SCOTTISH STATUTORY INSTRUMENTS

2002 No. 64

FOOD

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

Made	*15th February 2002*
Laid before the Scottish Parliament	*15th February2002*
Coming into force	*16th February 2002*

Whereas it appears to the Scottish Ministers that the import of certain star anise originating in, or consigned from, third countries may, save as permitted by the following Order, involve imminent risk of injury to health, they, in exercise of the powers conferred by sections 6(4), 13(1) and 48(1) of the Food Safety Act 1990[1], and of all other powers enabling them in that behalf, having regard, in accordance with section 48(4A)[2] of that Act, to relevant advice given by the Food Standards Agency, hereby make the following Order:

Citation, commencement and extent

1. - (1) This Order may be cited as the Food (Star Anise from Third Countries)

(Emergency Control) (Scotland) Order 2002 and shall come into force on 16th February 2002.

(2) This Order extends to Scotland only.

Interpretation

2. In this Order-

"the Act" means the Food Safety Act 1990;

"the Commission Decision" means Commission Decision 2002/75/EC[3] imposing special conditions on the import from third countries of star anise;

"free circulation" has the same meaning as in Article 23.2 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*);

"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 in the definition of "star anise for human consumption" terms used in this Order have the same meaning as in the Commission Decision.

Prohibition of import

3. - (1) No person shall import into Scotland any star anise for human consumption which has been consigned from a country which is not a member State of the European Community, except in accordance with the conditions specified 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 Scotland-

(i) from another member State of the European Community of star anise for human consumption which is in free circulation in that member State;

(ii) from England, Wales or Northern Ireland of star anise for human consumption which has been imported into the United Kingdom in accordance with the conditions specified in Article 1.1 and the second sentence of Article 1.2 of the Commission Decision.

(3) No person shall import into Scotland any Japanese star anise which has been consigned from a country which is not a member State of the European Community, unless it-

(a) is intended for use other than for human consumption; and

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

Enforcement

4. - (1) It shall be the duty of each food authority to enforce and execute this Order within its area.

(2) Each food authority shall give such assistance and information to the Scottish Ministers 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 (obstruction etc. of officers);

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

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

(2) Subject to paragraph (3) below, 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 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 the star anise concerned has been imported into Scotland in contravention of article 3(1), or as the case may be, article 3(3) of the Food (Star Anise from Third Countries) (Emergency Control) (Scotland) 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 concerned 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 concerned and remove it in order to have it dealt with by a sheriff,

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 of the standard scale.

(4) Where the authorised officer exercises the powers conferred by subsection (3)(a) above, the authorised officer 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 concerned has not been imported in contravention of article 3(1) or, as the case may be, article 3(3) of the Food (Star Anise from Third Countries) (Emergency Control) (Scotland) Order 2002 and-

(a) if the authorised officer is so satisfied, shall forthwith withdraw the notice; or

(b) if the authorised officer is not so satisfied, shall seize the star anise concerned and remove it in order to have it dealt with by a sheriff.

(5) Where an authorised officer exercises the powers conferred by subsections (3)(b) or (4)(b) above, the authorised officer shall inform the person in charge of the star anise concerned of the intention to have it dealt with by a sheriff and any person who under section 35(2) of this Act might be liable to a prosecution in respect of the star anise concerned shall, if that person attends before the sheriff by whom the star anise concerned falls to be dealt with, be entitled to be heard and to call witnesses.

(6) If it appears to the sheriff, on the basis of such evidence as the sheriff considers appropriate in the circumstances, that any star anise concerned falling to be dealt with under this section has been imported in contravention of article 3(1) or, as the case may be, article 3(3) of the Food (Star Anise from Third Countries) (Emergency Control) (Scotland) Order 2002, the sheriff shall condemn the star anise concerned and order-

(a) the star anise concerned 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 concerned.

(7) If a notice under subsection (3)(a) above is withdrawn, or the sheriff by whom the star anise concerned falls to be dealt with under this section refuses to condemn it, the food authority shall compensate the owner of the star anise concerned 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 a single arbiter, appointed, failing agreement between the parties, by the sheriff.".

(3) The expressions "food authority", "star anise for human consumption" and "Japanese star anise" used in the application of section 9 of the Act for the purposes of this Order which is effected by paragraph (2) shall, for those purposes, bear the meanings that those expressions respectively bear in this Order.

MARY MULLIGAN
Authorised to sign by the Scottish Ministers

St Andrew's House, Edinburgh
15th February 2002

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under section 13(1) of the Food Safety Act 1990 in consequence of it appearing to the Scottish Ministers that the importation into Scotland of star anise consigned from certain third countries which are not member States of the European Community may involve imminent risk of injury to health.

The Order implements Commission Decision 2002/75/EC imposing special conditions on the import from third countries of star anise (O.J. No. L 33, 2.2.02, p.31).

The Order-

(a) prohibits the importation of "star anise for human consumption" (as defined in article 2) 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, 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 (article 3(1));

(b) prohibits the importation of "Japanese star anise" (as defined in article 2) intended for human consumption or which is not labelled to the effect that it is unfit for such use (article 3(3));

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

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

Contravention of the Order is an offence under section 13(2) of the Food Safety Act 1990.

No regulatory impact assessment has been prepared in relation to this Order.

Notes:

[1] 1990 c.16; section 6(4) was amended by paragraph 6 of Schedule 9 to the Deregulation and Contracting Out Act 1994 (c.40); sections 13(1) and 48(1) were amended by the Food Standards Act 1999 (c.28) ("the 1999 Act"), Schedule 5, paragraph 8. Amendments made by Schedule 5 to the 1999 Act which extend to Scotland shall be taken as pre-commencement enactments for the purposes of the Scotland Act 1998 (c.46) ("the 1998 Act") by virtue of section 40(2) of the 1999 Act. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.back

[2] Section 48 (4A) was inserted by paragraph 21 of Schedule 5 to the Food Standards Act 1999.back

[3] O.J. L 33, 2.2.02, p.31.back

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