Scottish Statutory Instrument 2002 No. 149

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

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SCOTTISH STATUTORY INSTRUMENTS

2002 No. 149

FOOD

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

Made	*25th March 2002*
Laid before the Scottish Parliament	*25th March 2002*
Coming into force in accordance with regulation 1(1)	

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972[1] and all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and extent

1. - (1) These Regulations may be cited as the Food (Peanuts from China) (Emergency Control) (Scotland) Regulations 2002 and shall come into force at 1700 hours on 25th March 2002.

(2) These Regulations extend to Scotland only.

Interpretation

2. - (1) In these Regulations-

"the Act" means the Food Safety Act 1990[2];

"the Commission Decision" means Commission Decision 2002/79/EC[3] imposing special conditions on the import of peanuts and certain products derived from peanuts originating in or consigned from China as amended by Commission Decision 2002/233/EC[4];

"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 2002 11 94 (in immediate packs of a net content exceeding 1 kg) 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;

"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[5];

"free circulation" has the same meaning as in Article 23.2 of the Treaty establishing the European Community.

(2) In these Regulations, any terms used in the definition of "Chinese peanuts" have the same meaning as in the Commission Decision.

Prohibition of import

3. - (1) Subject to paragraph (3), no person shall import into Scotland any Chinese peanuts which are intended for human consumption or to be used as an ingredient in foodstuffs unless-

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

(b) the derogation contained in Article 1a of the Commission Decision (which is concerned with the importation of Chinese peanuts which left China before 11th March 2002) is satisfied in relation to the Chinese peanuts concerned.

(2) Subject to paragraph (3), no person shall import into Scotland any Chinese peanuts which are intended for human consumption or to be used as an ingredient in foodstuffs, other than through a point of entry listed in Annex II to the Commission Decision.

(3) Paragraphs (1) and (2) above shall not be taken to prohibit the bringing into Scotland-

(i) from another member State of the European Community of Chinese peanuts which are in free circulation in that member State; and

(ii) from England, Wales or Northern Ireland of Chinese peanuts which have been imported into the United Kingdom in accordance with the Commission Decision.

(4) 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) It shall be the duty of each food authority to enforce and execute these Regulations within its area.

(2) For the purposes of the exercise of the duty referred to in paragraph (1), an authorised officer of a food authority 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 the purposes connected with the Act or Regulations or Orders made under the Act.

(3) 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 these Regulations.

Application of various provisions of the Act

5. - (1) The following provisions of the Act shall apply for the purposes of these Regulations and any reference in those provisions to the Act or any Part thereof shall be construed for the purposes of these Regulations 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) applied by sub-paragraph (b);

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

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

(g) section 36A (offences by Scottish partnerships); and

(h) 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 may at all reasonable times inspect any 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 Chinese peanuts have been imported into Scotland in contravention of regulation 3(1) or (2) of the Food (Peanuts from China) (Emergency Control) (Scotland) Regulations 2002.

(3) The authorised officer may either-

(a) give notice to the person in charge of the Chinese peanuts that, until the notice is withdrawn, the Chinese 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 Chinese peanuts and remove them in order to have them 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 on 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 or she is satisfied that the Chinese peanuts have not been imported in contravention of regulation 3(1) or (2) of the Food (Chinese Peanuts) (Emergency Control) (Scotland) Regulations 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 Chinese peanuts and remove them in order to have them dealt with by a sheriff.

(5) Where an authorised officer exercises the powers conferred by subsection (3) (b) or (4)(b) above, the authorised officer shall inform the person in charge of the Chinese peanuts of the intention to have them dealt with by a sheriff and any person who under regulation 3(4) of the Food (Peanuts from China) (Emergency Control) (Scotland) Regulations 2002 might be liable to a prosecution in respect of the Chinese peanuts shall, if that person attends before the sheriff by whom the Chinese peanuts fall 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 Chinese peanuts falling to be dealt with

under this section have been imported in contravention of regulation 3(1) or (2) of the Food (Peanuts from China) (Emergency Control) (Scotland) Regulations 2002, the sheriff shall condemn the Chinese peanuts and order-

(a) the Chinese 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 Chinese peanuts.

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

(3) The words "Chinese peanuts" used in the application of section 9 of the Act for the purposes of these Regulations which is effected by paragraph (2) shall, for those purposes, bear the meaning that those words 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 "an enforcement authority" there shall be substituted "a food authority";

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

" (ii) is found by the authorised officer on or in any premises which the authorised officer may enter by virtue of regulation 4(2) of the Food (Peanuts from China) (Emergency Control) (Scotland) Regulations 2002;";

(c) the power to take samples under subsections (b) and (d) shall be limited to the taking of samples in accordance with 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 "any of the provisions of this Act or of regulations or orders made under it" in subsection (d) there shall be substituted "the Food (Peanuts from China) (Emergency Control) (Scotland) 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 Chinese peanuts, it shall be ensured 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 Annex II to Directive 98/53/EC;

(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[6]; 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[7]; 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 Annex II to Directive 98/53/EC.

MARY MULLIGAN
Authorised to sign by the Scottish Ministers

St Andrew's House, Edinburgh
25th March 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 2(2) of the European Communities Act 1972 in consequence of it appearing to the Scottish Ministers that the importation into Scotland of peanuts originating in, or consigned from, China, may involve imminent risk of injury to health.

The Regulations 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 (O.J. No. L 34, 5.2.02, p.21), as amended by Commission Decision 2002/233/EC (O.J. No. L 78, 21.3.02, p.14).

The Regulations-

(a) prohibit the importation of Chinese peanuts (as defined in regulation 2) which left China on or after 11th March 2002, except where they are accompanied by Chinese Government health certificates and 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 (regulations 2 and 3);

(b) prohibit the importation of Chinese peanuts (as defined in regulation 2) which left China before 11th March 2002 and which are not accompanied by the documentation otherwise required, except where the importation takes place only through a specified point of entry and the operator can show, by sampling and analysis of the consignment in the prescribed manner, that it does not contain aflatoxin B1 or total aflatoxin above the legally prescribed maximum levels (regulations 2 and 3);

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

(d) 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] 1972 c.68. Section 2(2) was amended by the Scotland Act 1998 (c.46) ("the 1998 Act"), Schedule 8, paragraph 15(3). The functions conferred on a Minister of the Crown under section 2(2) of the 1972 Act, in so far as within devolved competence, were transferred to the Scottish Ministers by virtue of section 53 of the 1998 Act.back

[2] 1990 c.16.back

[3] O.J. L 34, 5.2.02, p.21.back

[4] O.J. L 78, 21.3.02, p.14.back

[5] O.J. L 201, 17.7.98, p.93.back

[6] O.J. L 372, 31.12.85, p.90.back

[7] O.J. L 290, 24.11.93, p.14.back

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