Scottish Statutory Instrument 2002 No. 179

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

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SCOTTISH STATUTORY INSTRUMENTS

2002 No. 179

FOOD

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

Made	*3rd April 2002*
Laid before the Scottish Parliament	*4th April 2002*
Coming into force	*4th April 2002*

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 (Jelly Confectionery) (Emergency Control) (Scotland) Regulations 2002 and shall come into force on 4th April 2002.

(2) These Regulations shall extend to Scotland only.

Interpretation

2. - (1) In these Regulations-

"the Act" means the Food Safety Act 1990[2] and any expression used both in these Regulations and in the Act has the same meaning as in the Act;

"the Commission Decision" means Commission Decision 2002/247/EC suspending the placing on the market and import of jelly confectionery containing the food additive E 425 Konjac[3];

"jelly confectionery" includes jelly mini-cups.

(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 jelly confectionery which contains E 425: Konjac (i) Konjac gum (ii) Konjac glucomannane.

(2) No person shall use E 425: Konjac (i) Konjac gum (ii) Konjac glucomannane in the manufacture of any jelly confectionery.

(3) 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 execute and enforce these Regulations within its area.

(2) For the purposes of the exercise of the duty referred to in paragraph (1), an authorised officer of the food authority concerned shall-

(a) have the same powers as an authorised officer of an enforcement authority under 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[4], 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 6(1)(c) of these Regulations.

(3) Each food authority shall give such assistance and information to the Scottish Ministers and the Food Standards Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

Inspection and seizure of jelly confectionery

5. - (1) An authorised officer of a food authority may, for the purpose of enforcing these Regulations, 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) Paragraphs (3) to (8) shall apply where, whether or not on an inspection carried out under paragraph (1), it appears to an authorised officer that-

(a) any person has carried out commercial operations with respect to jelly confectionery which contains E 425: Konjac: (i) Konjac gum (ii) Konjac glucomannane in contravention of regulation 3(1) of these Regulations; or

(b) any person has used E 425: Konjac: (i) Konjac gum (ii) Konjac glucomannane in the manufacture of any jelly confectionery in contravention of regulation 3(2) of these Regulations.

(3) The authorised officer may either-

(a) give notice to the person in charge of such confectionery that, until the notice is withdrawn, the 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 such confectionery 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 on the standard scale.

(4) Where the authorised officer exercises the powers conferred by paragraph (3)(a) above, that officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not that officer is satisfied that there has been no contravention of regulation 3(1) or (2) of these Regulations 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 confectionery and remove it in order to have it dealt with by a sheriff.

(5) Where an authorised officer exercises the powers conferred by paragraph (3)(b) or (4)(b) above, the authorised officer shall inform the person in charge of the confectionery of the intention to have it dealt with by a sheriff and any person who under regulation 3(3) of these Regulations might be liable to a prosecution in respect of the confectionery shall, if that person attends before the sheriff by whom the confectionery 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 person has contravened regulation 3(1) or (2) of these Regulations in relation to any confectionery falling to be dealt with under this section,

the sheriff shall condemn the confectionery and order-

(a) the 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 confectionery.

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

Application etc. of various provisions of the Act

6. - (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 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 29 (procurement of samples) with the modifications that-

(i) for "an enforcement authority" there shall be substituted "a food authority";

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

" (ii) is found by the authorised officer on or in any premises which the authorised officer is authorised to enter in pursuance of regulation 4(2)(a) of the Food (Jelly Confectionery) (Emergency Control) (Scotland) Regulations 2002;";

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

(iv) 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 (Jelly Confectionery) (Emergency Control) (Scotland) Regulations 2002";

(d) section 30 (analysis etc. of samples) with the 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 paragraph (c); 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(2)(b) of these Regulations;

(e) section 33 (obstruction etc. of officers);

(f) section 35(1) to (3), in so far as it relates to offences under section 33 as applied by sub-paragraph (e);

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

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

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

Modification of the Food Safety (Sampling and Qualifications) Regulations 1990

7. Regulation 9(1) of the Food Safety (Sampling and Qualifications) Regulations 1990[5] 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 6(1)(c) of the Food (Jelly Confectionery) (Emergency Control) (Scotland) Regulations 2002 has been analysed or examined in pursuance of regulation 4(2)(b) of those Regulations, the owner shall be entitled on request to be supplied with a copy of the certificate of analysis or examination by the food authority.".

MARY MULLIGAN
Authorised to sign by the Scottish Ministers

St Andrew's House, Edinburgh
3rd April 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, are made under section 2(2) of the European Communities Act 1972. They implement Commission Decision 2002/247/EC suspending the placing on the market and import of jelly confectionery containing the food additive E 425 Konjac (O.J. No. L 84, 28.03.02, p.69).

The Regulations-

(a) prohibit the carrying out of commercial operations with regard to jelly confectionery which contains the food additive E 425 Konjac (regulation 3(1));

(b) prohibit the use of E 425 Konjac in the manufacture of jelly confectionery (regulation 3(2)).

(c) specify the enforcement authority and make consequential provisions relating to the execution and enforcement of the Regulations by a food authority (regulation 4);

(d) provide powers of seizure and inspection to authorised officers of food authorities in relation to suspected jelly confectionery (regulation 5); and

(e) apply, with modifications, certain provisions of the Food Safety Act 1990 (regulation 6) and regulation 9(1) of the Food Safety (Sampling and Qualifications) Regulations 1990 (regulation 7).

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 the 1998 Act.back

[2] 1990 c.16.back

[3] O.J. No. L 84, 28.03.02, p.69.back

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

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

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