Statutory Instrument 2003 No. 1940

The Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (England) Regulations 2003

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STATUTORY INSTRUMENTS

2003 No. 1940

FOOD, ENGLAND

The Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (England) Regulations 2003

Made	*28th July 2003*
Laid before Parliament	*29th July 2003*
Coming into force	*30th July 2003*

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 application

1. - (1) These Regulations may be cited as the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (England) Regulations 2003[a] and shall come into force on 30th July 2003.

(2) These Regulations apply in relation to England only.

Interpretation

2. - (1) In these Regulations -

"the Act" means the Food Safety Act 1990[3] and, save where the context otherwise requires 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 2003/460/EC on emergency measures regarding hot chilli and hot chilli products[b][4] as corrected by a corrigendum published on 25th July 2003[5];

"controlled hot chilli and hot chilli products" means hot chilli and hot chilli products 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;

"free circulation" has the same meaning as in Article 23.2, as read with Article 24, of the Treaty establishing the European Community;

"hot chilli and hot chilli products" means fruits of the genus Capsicum, dried and crushed or ground falling within CN code 0904 20 30 or 0904 20 90; and

"port health authority" means -

(a) in relation to the London port health district (within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984[6] by section 7(1) of that Act), the Common Council of the City of London; and

(b) in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984, a port health authority for that district constituted by order under section 2(4) of that Act.

(2) Any term used in the definition of "hot chilli and hot chilli products" in paragraph (1) has the same meaning as in the Commission Decision.

Prohibition on import

3. - (1) Subject to paragraph (2), no person shall import into England any controlled hot chilli and hot chilli products unless -

(a) the conditions specified in Articles 2.1 and 3, 3.1 and 4 of the Commission Decision are satisfied in relation to those products; and

(b) the costs resulting from their analysis and storage specified in Article 6 of the Decision have been met.

(2) Nothing in paragraph (1) shall be taken to prohibit the import into England from a member State of any controlled hot chilli and hot chilli products which are in free circulation in that State.

(3) Any person who knowingly contravenes paragraph (1) 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.

(4) For the purpose of determining whether or not any person is guilty of an offence consisting of a breach of paragraph (3), any hot chilli and hot chilli products shall be presumed until the contrary is proved to be controlled hot chilli and hot chilli products.

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 -

(a) ensure that the requirements referred to in paragraph (4) are adhered to; and

(b) 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) The requirements are those specified in -

(a) Article 2.1 and 2 of the Commission Decision (which is concerned with documentary checks relating to consignments of controlled hot chilli and hot chilli products);

(b) Article 3 of that Decision (which is concerned with the sampling and analysis of such consignments), other than the requirement to supply the Commission with specified information; and

(c) Article 4 of that Decision (which is concerned with the case where consignments are split).

(5) Each port health authority and 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 of various provisions of the Food Safety Act 1990 and sampling and analysis

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 section 33(1)(b) 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) 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 at any premises which he is authorised to enter by virtue of regulation 4(3)(b) of the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (England) Regulations 2003;";

(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 (Hot Chilli and Hot Chilli Products) (Emergency Control) (England) Regulations 2003".

(3) Section 30 (analysis etc. of samples) shall apply for the purposes of these Regulations with the modification that in subsection (1) for the words "An

authorised officer of an enforcement authority who has procured a sample under section 29 above shall" there shall be substituted the words "An authorised officer of a food authority or a port health authority who has procured a sample under section 29 above as applied for the purposes of the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (England) Regulations 2003 by regulation 5(2) thereof shall".

(4) Where a sample procured under section 29 of the Act as applied for the purposes of these Regulations by paragraph (2) has been analysed in accordance with the provisions of section 30 of the Act as so applied by paragraph (3), the owner shall be entitled on request to be supplied with a copy of the certificate of analysis by the authority which, by virtue of regulation 4(1) or (2), has the duty of enforcing them.

Destruction of illegal imports

6. - (1) If on an inspection or examination of any hot chilli and hot chilli products it appears to an authorised officer of a port health authority or as the case may be food authority that they have been imported in contravention of regulation 3(1) he may after appropriate consultation with a person appearing him to be the importer serve on that person a notice ordering the destruction of the hot chilli and hot chilli products within such reasonable period as shall be so specified.

(2) In any case where such an appeal as is mentioned in paragraph (3) may be brought the notice served under paragraph (1) shall state -

(a) the right of appeal to a magistrates' court; and

(b) the period within which such an appeal may be brought.

(3) Any person who is aggrieved by a decision of an authorised officer to serve a notice under paragraph (1) may appeal to a magistrates' court, which shall determine whether or not the notice was lawfully served.

(4) The period within which such an appeal as is mentioned in paragraph (3) may be brought shall be 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and Public Holidays and the making of the complaint shall be deemed for the purpose of this paragraph to be the bringing of the appeal.

(5) The procedure on an appeal to a magistrates' court under paragraph (3) shall be by way of complaint for an order and the Magistrates' Courts Act 1980[7] shall apply to the proceedings.

(6) If the court allows an appeal brought under paragraph (3) the authority concerned shall compensate the owner of the hot chilli and hot chilli products concerned for any depreciation in their value resulting from the action taken by the authorised officer.

(7) Any disputed question as to the right to or the amount of any compensation payable under paragraph (6) shall be determined by arbitration.

(8) Any person who breaches the terms of a notice served under paragraph (1) 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.

Signed by authority of the Secretary of State for Health

Melanie Johnson
Parliamentary Under Secretary of State, Department of Health

28th July 2003

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which apply in relation to England only, implement Commission Decision 2003/460/EC on emergency measures regarding hot chilli and hot chilli products (OJ No. L154, 21.6.2003, p.114) as corrected by a corrigendum published on 25th July 2003 (OJ No. L186, 25.7.2003, p.47).

The Regulations -

(a) prohibit the importation of "controlled hot chilli and hot chilli products" (defined in regulation 2(1)), except where they are accompanied by an analytical report demonstrating that the product does not contain Sudan red 1 (CAS No. 842 - 07 - 9) (*regulation 3*);

(b) provide for their enforcement (*regulation 4*);

(c) apply with modifications certain provisions of the Food Safety Act for the purposes of the Regulations and provide for sampling and analysis (*regulation 5*); and

(d) provide for the destruction of illegal imports of controlled hot chilli and hot chilli products (*regulation 6*).

The CN codes referred to in the definition of "hot chilli and hot chilli products" are the code numbers of the combined nomenclature established by Regulation 2658/87 on the tariff and statistical nomenclature and on the customs tariff (OJ No. L256, 7.9.87, p.1).

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. L154, 21.6.2003, p.114.back

[5] OJ No. L186, 25.7.2003, p.47.back

[6] 1984 c. 22.back

[7] 1980 c. 43.back

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[a] Amended by Correction Slip. On page 1, in regulation 1, "Regulation 2002" should read "Regulation 2003"; back
[b] and in regulation 2, scond paragraph, "hot chill products" should read "hot chilli products". back

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ISBN 0 11 047130 X

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