

Scottish Statutory Instrument 2003 No. 396

The Food (Brazil Nuts) (Emergency Control) (Scotland) Regulations 2003

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SCOTTISH STATUTORY INSTRUMENTS

2003 No. 396

FOOD

**The Food (Brazil Nuts) (Emergency Control) (Scotland) Regulations
2003**

Made

25th August 2003

*Laid before the Scottish
Parliament*

26th August 2003

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 (Brazil Nuts) (Emergency Control) (Scotland) Regulations 2003 and shall come into force on 27th August 2003.

(2) These Regulations extend to Scotland only.

Interpretation

2. In these Regulations-

(a) "the Act" means the Food Safety Act 1990^[2] and, save where the context otherwise requires and subject to paragraph (b), any expression used in both these Regulations and in the Act has the meaning it bears in the Act;

"Brazil nuts" means Brazil nuts in shell falling within CN code 0801 21 00 originating in or consigned from Brazil;

"the Commission Decision" means Commission Decision 2003/493/EC imposing special conditions on the import of Brazil nuts in shell originating in or consigned from Brazil^[3];

"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^[4] as amended by Commission Directive 2002/27/EC^[5];

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

"Regulation (EC) No. 466/2001" means Commission Regulation (EC) No. 466/2001 setting maximum levels for certain contaminants in foodstuffs^[6] as amended by Council Regulation (EC) No. 2375/2001^[7]; and

(b) any term used in the definition of "Brazil nuts" in paragraph (1) has the same meaning as in the Commission Decision.

Prohibition on import

3. - (1) Subject to paragraph (3), no person shall import into Scotland any Brazil nuts unless-

(a) the conditions specified in Articles 1.1, 2 and 3.1 of the Commission Decision are satisfied in relation to those Brazil nuts; or

(b) the derogation contained in Article 1.2 of the Commission Decision (which is concerned with consignments which left Brazil prior to 5th July 2003) is satisfied in relation to them,

and in either case-

(c) an official document has been issued in accordance with Article 4.4 of the Commission Decision which shows that the Brazil nuts comply with the provisions of Regulation (EC) No. 466/2001 as regards maximum permitted levels for aflatoxin B1 and total aflatoxin.

(2) Subject to paragraph (3), no person shall import any Brazil nuts into Scotland except through a point of entry listed in Annex II to the Commission Decision.

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

(i) from another member State of the European Community of Brazil nuts which are in free circulation in that member State; or

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

(4) Any person who knowingly contravenes paragraphs (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 a food authority shall-

(a) ensure that the requirements referred to in paragraph (3) are adhered to; and

(b) have the same powers of entry 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.

(3) The requirements are those specified in-

(a) Article 4.1 of the Commission Decision (which is concerned with documentary checks relating to consignments of Brazil nuts);

(b) Articles 4.2 and 4.4 of that Decision (which provisions are concerned with the sampling and analysis of such consignments); and

(c) Article 5 in so far as it relates to the certification of copies of the health certificate and accompanying documents.

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

Application of various provisions of the 1990 Act 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 (obstruction etc. of officers);
- (c) section 35(1) to (3) (punishment of offences), in so far as it relates to offences under section 33(1) and (2) as applied by sub-paragraph (b);
- (d) section 36 (offences by bodies corporate);
- (e) section 36A (offences by Scottish partnerships); and
- (f) 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 "an enforcement authority" there shall be substituted "a food authority";
- (b) for paragraph (b)(ii) there shall be substituted the following-

" (ii) is found by the authorised officer at any premises which the authorised officer may enter by virtue of regulation 4(2)(b) of the Food (Brazil nuts) (Emergency Control) (Scotland) Regulations 2003;"
- (c) the power to take samples under paragraphs (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) paragraph (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 (Brazil Nuts) (Emergency Control) (Scotland) Regulations 2003".

(3) Where, pursuant to section 29(b) of the Act as applied for the purposes of these Regulations by paragraph (2), an authorised officer has taken a sample of any Brazil nuts, it shall be ensured that-

- (a) the sample is prepared in accordance with paragraphs 1, 2 and 3 of

Annex II to Directive 98/53/EC.

(b) 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[8];

(c) that analysis of the sample is carried out as soon as practicable by a suitably qualified analyst 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; and

(d) the reporting of the result of that analysis of the 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.

(4) Before an analyst agrees to analyse a sample in accordance with paragraph (3)(c) the analyst may demand the payment in advance of such reasonable fee as the analyst may require.

(5) An analyst who has analysed a sample in accordance with paragraph (3)(c) shall give to the person by whom it was submitted a certificate which shall both specify the result of the analysis and be signed by the analyst.

(6) In any proceedings under these Regulations, the production by one of the parties of-

(a) a document purporting to be a certificate given by an analyst under paragraph (5); or

(b) a document supplied to that party by the other party as being a copy of such a certificate,

shall be sufficient evidence of the facts stated in it unless, in a case falling within sub paragraph (a), the other party requires that the analyst shall be called as a witness.

(7) 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 paragraph (3)(b) and (c), the owner shall be entitled on request to be supplied with a copy of the certificate of analysis by the food authority.

(8) Nothing in paragraph (3)(c) shall be taken as preventing an analysis being made by a person acting under the analyst's direction.

Disposal of illegal imports

6. If on an inspection or examination of any Brazil nuts it appears to an authorised officer of a food authority that they have been imported in contravention of regulation 3(1)(a) or (2) the authorised officer may after appropriate consultation with a person appearing to be the importer serve on that person a notice ordering-

(a) the re-dispatch of the Brazil nuts outside the European Community within such reasonable period as shall be specified in the notice; or

(b) where the period specified in a notice issued under sub-paragraph (a) has elapsed and the Brazil nuts have not been re-dispatched, the destruction of the Brazil nuts within such reasonable period as shall be specified in the notice.

Disposal of imports following sampling and analysis

7. If following sampling and analysis any Brazil nuts have been issued with an official document in accordance with Article 4.4 of the Commission Decision showing that the consignment does not comply with the provisions of Regulation (EC) No. 466/2001 as regards maximum levels for aflatoxin B1 and total aflatoxin, the authorised officer shall after appropriate consultation with a person appearing to be the importer serve on that person a notice ordering the disposal of the Brazil nuts in accordance with the requirements of Article 6 of the Commission Decision.

Storage of imports

8. The person on whom a notice has been served under regulations 6 or 7 above shall ensure that the Brazil nuts to which the notice applies are stored until re dispatch or destruction under the supervision of the authorised officer at such places and under such conditions as the authorised officer may in the notice direct.

Appeals

9. - (1) Any notice served under regulation 6 or 7 above shall state-

(a) the right of appeal to the sheriff under paragraph (2); and

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

(2) Any person who is aggrieved by a decision of an authorised officer to serve a notice under regulation 6 or 7 above may appeal to the sheriff who may confirm or cancel the notice.

(3) The period within which such an appeal as is mentioned in paragraph (2) may be brought shall be 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and public holidays.

(4) Pending determination of an appeal under paragraph (2), regulation 8 shall apply to the storage of the Brazils nuts concerned.

(5) If the sheriff allows an appeal brought under paragraph (2) the food authority shall compensate the owner of the Brazil nuts concerned for any depreciation in their value resulting from the action taken by the authorised

officer.

(6) Any disputed question as to the right to or the amount of any compensation payable under paragraph (6) shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(7) Any person who breaches the terms of a notice served under regulations 6 or 7 above 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.

(8) The costs of re-dispatch, storage and distribution of Brazil nuts under this regulation shall be borne by the importer.

MALCOLM CHISHOLM

A member of the Scottish Executive

St Andrew's House, Edinburgh
25th August 2003

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 that the importation into Scotland of Brazil nuts in shell originating in, or consigned from, Brazil, may involve imminent risk of injury to health.

The Regulations implement Commission Decision 2003/493/EC imposing special conditions on the import of Brazil nuts in shell originating in or consigned from Brazil (O.J. No. L 168, 5.7.03, p.33).

These Regulations-

(a) prohibit the importation of "Brazil nuts" (defined in regulation 2), except where-

(i) they are accompanied by a Brazilian Government health certificate and the results of official sampling and analysis, the importation takes place only through a specified point of entry and each consignment or its constituent parts is identified with a code corresponding with that specified on the health certificate and the accompanying report containing the sampling and analysis results;

(ii) they are subject to specified documentary checks; and

(iii) each consignment is subjected to analysis for aflatoxin B1 and total aflatoxin levels and has been issued with an official document showing that the products do not contain aflatoxin B1 or total aflatoxin above the legal prescribed maximum levels (regulation 3);

(b) prohibit the importation of Brazil nuts which left Brazil before 5th July 2003 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 they do not contain aflatoxin B1 or total aflatoxin above the legal prescribed maximum levels (regulation 3);

(c) provide for their enforcement (regulation 4);

(d) apply with modifications certain provisions of the Food Safety Act 1990 for the purposes of the Regulations and provide for sampling and analysis (regulation 5); and

(e) provide for the re-dispatch or destruction of illegal imports of Brazil nuts (regulation 6 and 7).

The CN code referred to in the definition of "Brazil nuts" is the code number of the combined nomenclature established by Council Regulation (EC) No. 2658/87 on the tariff and statistical nomenclature and on the Customs tariff (O.J. No. L 256, 7.9.87, p.1).

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. No. L 168, 5.7.03, p.33.[back](#)

[4] O.J. No. L 201, 17.7.98, p.93.[back](#)

[5] O.J. No. L 75, 16.3.02, p.44.[back](#)

[6] O.J. No. L 77, 16.3.01, p.1, as corrected by a corrigendum published on 30th November 2001 (O.J. No. L 313, 30.11.01, p.60).[back](#)

[7] O.J. No. L 321, 6.12.01, p.1.[back](#)

[8] O.J. No. L 290, 24.11.93, p.14.[back](#)

[9] O.J. No. L 372, 31. 12. 85, p.50.[back](#)

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