Statutory Instrument 2005 No. 1442

The Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (England) Regulations 2005

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STATUTORY INSTRUMENTS

2005 No. 1442

FOOD, ENGLAND

The Food (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (England) Regulations 2005

Made	*31st May 2005*
Laid before Parliament	*1st June 2005*
Coming into force	*2nd June 2005*

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 measures relating to food (including drink) including the primary production of food, 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 (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (England) Regulations 2005 and shall come into force on 2nd June 2005.

(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, any expression used both in these Regulations and in the Act has the meaning it bears in the Act;

"chilli" means fruits of the genus *Capsicum*, dried and crushed or ground within CN Code 09042090, in whatever form;

"chilli products" means curry powder within CN Code 091050, in whatever form;

"the Commission Decision" means the Commission Decision of 23rd May 2005 on emergency measures regarding chilli, chilli products, curcuma and palm oil[4];

"controlled products" means chilli, chilli products and curcuma intended for human consumption and palm oil intended for direct human consumption;

"curcuma" means curcuma, dried and crushed or ground within CN Code 091030, in whatever form;

"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;

"intended for direct human consumption" has the same meaning as in the Commission Decision;

"palm oil" means palm oil within CN Code 15111090; 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[5] 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 definitions of "chilli", "chilli products", "curcuma" and "palm oil" in paragraph (1) has the same meaning in these Regulations as in the Commission Decision.

Prohibition on import

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

(a) the conditions specified in Articles 2.1, 2 and 4 and 4 of the Commission Decision are satisfied in relation to those products; and

(b) the costs resulting from their analysis, storage or destruction specified in Article 6 of the Commission 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 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 or to both.

(4) For the purpose of determining whether or not any person is guilty of an offence consisting of a breach of paragraph (3), any chilli, chilli products, curcuma and palm oil shall be presumed until the contrary is proved to be controlled 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, 2 and 4 of the Commission Decision (which is concerned with documentary checks relating to consignments of controlled products);

(b) Article 3 of that Decision (which is concerned with the sampling and analysis of such consignments), other than the requirements to supply specified information and reports to the Commission; 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)[6], in so far as it relates to offences under section 33(1) as applied by sub-paragraph (b);

(e) section 35(2) and (3)[7], 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);

(g) section 36A (offences by Scottish partnerships)[8]; and

(h) 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 (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (England) Regulations 2005;";

(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 (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (England) Regulations 2005".

(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 (Chilli, Chilli Products, Curcuma and Palm Oil) (Emergency Control) (England) Regulations 2005 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 chilli, chilli products, curcuma or palm oil 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 to him to be the importer serve on that person a notice requiring the destruction of the chilli, chilli products, curcuma or palm oil within such reasonable period (not being less than 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and Public Holidays) as shall be so specified.

(2) 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 the notice should be upheld or set aside.

(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[9] 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 chilli, chilli products, curcuma or palm oil 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 or to both.

Revocation

7. The Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (England) Regulations 2003[10] and the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (England) (Amendment) Regulations 2004[11] are revoked.

Signed by authority of the Secretary of State for Health

Caroline Flint
Parliamentary Under Secretary of State, Department of Health

31st May 2005

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply in relation to England only, implement the Commission Decision of 23rd May 2005 on emergency measures regarding chilli, chilli products, curcuma and palm oil. That Decision repeals Commission Decision 2004/92/EC on emergency measures regarding chilli and chilli products (OJ No. L27, 30.1.2004, p.52).

2. The Regulations -

(a) subject to transitional provisions, prohibit the importation of "chilli", "chilli products", "curcuma" and "palm oil" (defined in regulation 2(1)) that are (in the case of the first three products named) intended for human consumption and (in the case of the final product named) intended for direct human consumption, except where they are accompanied by an original analytical report demonstrating that the product does not contain Sudan I (CAS Number 842-07-9), Sudan II (CAS Number 3118-97-6), Sudan III (CAS Number 85-86-9) or Scarlet Red or Sudan IV (CAS Number 85-83-6) (*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*);

(d) provide for the destruction of illegal imports of chilli, chilli products, curcuma and palm oil (*regulation 6*); and

(e) revoke the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (England) Regulations 2003 (S.I. 2003/1940) and the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (England) (Amendment) Regulations 2004 (S.I. 2004/142) (*regulation 7*).

3. The CN codes referred to in the definitions of "chilli", "chilli products", "curcuma" and "palm oil" 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).

4. No regulatory impact assessment has been prepared in relation to these Regulations.

Notes:

[1] S.I. 2003/2901.back

[2] 1972 c. 68.back

[3] 1990 c. 16; section 1(1) and (2) (definition of "food) was substituted by S.I. 2004/2990; section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c. 40), Schedule 6 to the Food Standards Act 1999 (1999 c. 28) and S.I. 2004/2990.back

[4] O.J. No. L 135, 28.5.05, p.34..back

[5] 1984 c. 22.back

[6] Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c. 44), Schedule 26, paragraph 42, from a date to be appointed.back

[7] Section 35(3) was amended by S.I. 2004/3279.back

[8] Section 36A was inserted by the Food Standards Act 1999 (1999 c. 28), Schedule 5, paragraph 16.back

[9] 1980 c. 43.back

[10] S.I. 2003/1940.back

[11] S.I. 2004/142.back

ISBN 0 11 072897 1

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