

Statutory Rule 2002 No. 307

Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control No. 2) Regulations (Northern Ireland) 2002

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STATUTORY RULES OF NORTHERN IRELAND

2002 No. 307

FOOD

Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control No. 2) Regulations (Northern Ireland) 2002

Made

2nd October 2002

Coming into operation

4th October 2002

The Department of Health, Social Services and Public Safety, being a Department 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 it by the said section 2(2) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control No. 2) Regulations (Northern Ireland) 2002 and shall come into operation on 4th October 2002.

Interpretation

2. In these Regulations -

"the Commission Decision" means Commission Decision 2002/80/EC imposing special conditions on the import of figs, hazelnuts and pistachios and certain products derived thereof originating in or consigned from Turkey[3] as amended by Commission Decision 2002/233/EC[4] and Commission Decision 2002/679/EC[5];

"controlled Turkish products" means Turkish products which are intended for human consumption or to be used as an ingredient in foodstuffs;

"the Department" means the Department of Health, Social Services and Public Safety;

"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[6] as amended by Commission Decision 2002/27/EC[7];

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

"the Order" means the Food Safety (Northern Ireland) Order 1991[8], and, subject to paragraph (2), any expression used both in these Regulations and in the Order has the meaning it bears in the Order; and

"Turkish products" means products of the categories to which Article 1.1 of the Commission Decision applies and which originate in or are consigned from Turkey.

(2) Any term used in the definition of "controlled Turkish products" or "Turkish products" 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 any controlled Turkish products unless -

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

(b) the derogation contained in Article 1a of the Commission Decision (which is concerned with consignments which left Turkey prior to 11th March 2002) is satisfied in relation to them.

(2) Subject to paragraph (3), no person shall import any controlled Turkish products, except through a point of entry listed in Annex II to the Commission Decision.

(3) Neither paragraph (1) nor paragraph (2) shall be taken to prohibit the import from a member State of any controlled Turkish products which are in free circulation in that State.

(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.

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

Enforcement

4. - (1) These Regulations shall be enforced and executed by each district council within its district.

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

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

(b) have the same powers of entry as are bestowed on an authorised officer by Article 33 of the Order for purposes connected with the Order or Regulations or orders made under the Order.

(3) The requirements are those specified in -

(a) Article 1.4 of the Commission Decision (which is concerned with documentary checks relating to consignments of controlled Turkish products); and

(b) Article 1.5 and 1.6 of that Decision (which provisions are concerned with the sampling and analysis of such consignments) other than the requirement under Article 1.5 to supply the Commission with specified information.

(4) Each district council shall give such assistance and information to the Department 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 Order

5. - (1) The following provisions of the Order shall apply for the purposes of these Regulations and any reference in those provisions to the Order shall be construed for the purposes of these Regulations as a reference to these Regulations -

(a) Article 19 (offences due to fault of another person);

(b) Article 34 (obstruction, etc., of officers);

(c) Article 36(1) (punishment of offences) in so far as it relates to offences under Article 34 as applied by sub-paragraph (b).

(2) Article 29 of the Order (procurement of samples) shall apply for the purposes of these Regulations with the modifications that -

(a) for paragraph (b)(ii) there shall be substituted the following provision -

" (ii) is found by him on or in any premises which he is authorised to enter in pursuance of regulation 4(2)(b) of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control No. 2) Regulations (Northern Ireland) 2002;"

(b) the power to take samples under paragraphs (b) and (d) shall be limited to the taking of samples in accordance with -

(i) in the case of controlled Turkish products other than hazelnuts, the methods of taking samples described or referred to in Annex I to Directive 98/53/EC, and

(ii) in the case of hazelnuts, those methods, but subject to the modifications specified in the third sub-paragraph of Article 1.6 of the Commission Decision;

(c) paragraph (c) shall be omitted; and

(d) for "any of the provisions of this Order or of regulations or orders made under it" in paragraph (d) there shall be substituted "the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control No. 2) Regulations (Northern Ireland) 2002".

(3) Where, pursuant to Article 29(b) of the Order as applied for the purposes of these Regulations by paragraph (2), an authorised officer has taken a sample of any controlled Turkish products, he shall ensure 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 that Annex;

(b) an analysis of the sample is carried out at a laboratory which complies with Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs[9];

(c) that analysis 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[10], 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 -

(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) he may demand the payment in advance of such reasonable fee as he 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 by him to 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 Article 29 of the Order 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 district council.

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

Re-dispatch or destruction of illegal imports

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

- (a) the re-dispatch of the Turkish products outside the European Community within such reasonable period as shall be specified in the notice; or
- (b) (where such re-dispatch would in his opinion involve serious risks to human health) the destruction of the Turkish 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 court of summary jurisdiction; 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 court of summary jurisdiction, 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 six days, exclusive of Saturdays, Sundays and public holidays, from the date on which notice of the decision was served on the person desiring to appeal.

(5) The procedure on an appeal to a court of summary jurisdiction under paragraph (3) shall be by way of notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981[11].

(6) If the court allows an appeal brought under paragraph (3) the district council shall compensate the owner of the Turkish 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 a single arbitrator appointed, failing agreement between the parties, by the Department of Health, Social Services and Public Safety; and the provisions of the Arbitration Act 1996[12] shall apply accordingly.

(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.

Revocation of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) Regulations (Northern Ireland) 2002

7. The Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Regulations) (Northern Ireland) 2002[13] are hereby revoked.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on

2nd October 2002.

L.S.

D. Kenny

A Senior Officer of the Department of Health, Social Services and Public Safety

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations revoke and re-enact with changes the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) Regulations (Northern Ireland) 2002.

The Regulations implement Commission Decision 2002/80/EC imposing special conditions on the import of figs, hazelnuts and pistachios and certain products derived thereof originating in or consigned from Turkey (O.J. No. L34, 5.2.2002, p. 26) as amended by Commission Decision 2002/233/EC (O.J. No. L78, 21.3.2002, p. 14) and Commission Decision 2002/679/EC (O.J. No. L229, 27.8.2002, p. 37). The categories of products which are subject to those conditions are specified in Article 1.1 of Commission Decision 2002/80/EC as so amended.

The Regulations -

(a) prohibit the importation of any "controlled Turkish products" (defined in regulation 2(1)), except where -

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

(ii) (even though they are not accompanied by a Turkish Government health certificate or the results of official sampling and analysis) they left Turkey before 11th March 2002, the operator shows, by means of sampling and analysis in the prescribed manner, that the levels of aflatoxin B1 and total aflatoxin in the products do not exceed the maximum permitted levels and the importation takes place only through a specified point of entry (regulation 3);

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

(c) apply with modifications certain provisions of the Food Safety (Northern Ireland) Order 1991 for the purposes of the Regulations and provide for sampling and analysis (regulation 5); and

(d) provide for the re-dispatch or destruction of illegal imports of controlled Turkish products (regulation 6).

The principal changes effected by these Regulations are that -

(a) the list of controlled Turkish products is amended;

(b) the previous requirement that consignments of controlled Turkish products be subjected to random sampling and analysis in order to ensure compliance with Commission Decision 2002/80/EC is modified by providing that -

(i) only approximately 10% of such consignments should be so subjected,

(ii) consignments so subjected must be detained for that purpose,

(iii) the period of detention must not exceed 10 working days, and

(iv) an authorised officer must issue a notice in writing stating that sampling has taken place and the results of the analysis of the sample;

(c) the sampling procedure for hazelnuts is modified; and

(d) an authorised officer is empowered (subject to a right of appeal to a court of summary jurisdiction) to issue a notice ordering the re-dispatch of illegal imports of controlled Turkish products.

Notes:

[1] S.I. 2000/2812

[2] 1972 c. 68

[3] O.J. No. L34, 5.2.2002, p. 26

[4] O.J. No. L78, 21.3.2002, p. 14

[5] O.J. No. L229, 27.8.2002, p. 37

[6] O.J. No. L201, 17.7.1998, p. 93

[7] O.J. No. L75, 16.3.2002, p. 44

[8] S.I. 1991/762 (N.I. 7) as amended by S.I. 1996/1633 (N.I. 12) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c. 28

[9] O.J. No. L290, 24.11.93, p. 14

[10] O.J. No. L372, 31.12.85, p. 50

[11] S.I.1981/1675 (N.I. 26)

[12] 1996 c. 23

[13] S.R.2002 No. 140