

2002 No. 148

FOOD

The Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Scotland) Regulations 2002

Made

25th March 2002

Coming into force in accordance with regulation 1(1)

Laid before the Scottish Parliament

25th March 2002

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(a) 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 (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Scotland) Regulations 2002 and shall come into force at 1700 hours on 25th March 2002.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990(b);

“the Commission Decision” means Commission Decision 2002/80/EC(c) imposing special conditions on the import of figs, hazelnuts and pistachios and products derived from figs, hazelnuts and pistachios originating in or consigned from Turkey, as amended by Commission Decision 2002/233EC(d);

“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(e);

“Turkish figs, hazelnuts and pistachios” means—

- (a) figs and dried figs falling within CN code 0804 20 10 or within CN code 0804 20 90;
- (b) hazelnuts (*Corylus* sp) in shell or shelled falling within CN code 0802 21 00 or 0802 22 00;
- (c) pistachios falling within CN code 0802 50 00;
- (d) mixtures of nuts or dried fruits falling within CN code 0813 50 and containing figs, hazelnuts or pistachios; and

(a) 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.

(b) 1990 c.16.

(c) O.J. L 34, 5.2.02, p.26.

(d) O.J. L 78, 21.3.02, p.14.

(e) O.J. L 201, 17.7.98, p.93.

- (e) hazelnuts, figs and pistachios, prepared or preserved, including mixtures falling within CN code 2008 19, originating in, or consigned from, Turkey; “free circulation” has the same meaning as in Article 23.2 of the Treaty establishing the European Community.

(2) In these Regulations, any terms used in the definition of “Turkish figs, hazelnuts and pistachios” have the same meaning as in the Commission Decision.

Prohibition of import

3.—(1) Subject to paragraph (3), no person shall import into Scotland any Turkish figs, hazelnuts and pistachios which are intended for human consumption or to be used as an ingredient in foodstuffs unless—

- (a) the conditions specified in Article 1.1 and 1.3 of the Commission Decision are satisfied in relation to the Turkish figs, hazelnuts and pistachios concerned; or
- (b) the derogation contained in Article 1a of the Commission Decision (which is concerned with consignments which left Turkey before 11th March 2002) is satisfied in relation to the Turkish figs, hazelnuts and pistachios concerned.

(2) Subject to paragraph (3), no person shall import into Scotland any Turkish figs, hazelnuts or pistachios which are intended for human consumption or to be used as an ingredient in foodstuffs, other than 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 Turkish figs, hazelnuts and pistachios which are in free circulation in that member State; and
 - (ii) from England, Wales or Northern Ireland of Turkish figs, hazelnuts and pistachios which have been imported into the United Kingdom in accordance with the Commission Decision.

(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.

Enforcement

4.—(1) It shall be the duty of each food authority to enforce and execute 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 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.

(3) Each food authority shall give such assistance and information to the Scottish Ministers and the Food Standards Agency as they may reasonably request, for the purpose of carrying out their duties under section 13 of the Act in connection with these Regulations.

Application of various provisions of the Act

5.—(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 any Part thereof, shall be construed for the purposes of these Regulations 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 that subsection 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);
- (g) section 36A (offences by Scottish partnerships); and
- (h) section 44 (protection of officers acting in good faith).

(2) Subject to paragraph (3), section 9 of the Act (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if it read as follows:–

“9.—(1) An authorised officer of a food authority may at all reasonable times inspect any Turkish figs, hazelnuts or pistachios which–

- (a) have been sold or are offered or exposed for sale; or
- (b) are in the possession of, or have been deposited with or consigned to, any person for the purpose of sale or of preparation for sale.

(2) Subsections (3) to (8) shall apply where, whether or not on an inspection carried out under subsection (1), it appears to an authorised officer that any Turkish figs, hazelnuts or pistachios have been imported into Scotland in contravention of regulation 3(1) and (2) of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Scotland) Regulations 2002.

(3) The authorised officer may either–

- (a) give notice to the person in charge of the Turkish figs, hazelnuts or pistachios that, until the notice is withdrawn, the Turkish figs, hazelnuts or pistachios or any specified quantity of them–
 - (i) are not to be used for human consumption; and
 - (ii) either are not to be removed or are not to be removed except to some place specified in the notice; or
- (b) seize the Turkish figs, hazelnuts or pistachios and remove them in order to have them 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 subsection (3)(a) above, the authorised officer shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he or she is satisfied that the Turkish figs, hazelnuts or pistachios have not been imported in contravention of regulation 3(1) or (2) of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Scotland) Regulations 2002 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 Turkish figs, hazelnuts or pistachios and remove them in order to have them dealt with by a sheriff.

(5) Where an authorised officer exercises the powers conferred by subsection (3)(b) or (4)(b) above, the authorised officer shall inform the person in charge of the Turkish figs, hazelnuts or pistachios of the intention to have them dealt with by a sheriff and any person who under regulation 3(4) of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Scotland) Regulations 2002 might be liable to a prosecution in respect of the Turkish figs, hazelnuts or pistachios shall, if that person attends before the sheriff by whom the Turkish figs, hazelnuts or pistachios fall 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 Turkish figs, hazelnuts or pistachios falling to be dealt with under this section have been imported in contravention of regulation 3(1) or (2) of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) Regulations 2002, the sheriff shall condemn the Turkish figs, hazelnuts or pistachios and order–

- (a) the Turkish figs, hazelnuts or pistachios to be destroyed or to be so disposed of as to prevent them 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 Turkish figs, hazelnuts or pistachios.

(7) If a notice under subsection (3)(a) above is withdrawn, or the sheriff by whom any Turkish figs, hazelnuts or pistachios fall to be dealt with under this section refuses to

condemn them, the food authority shall compensate the owner of the Turkish figs, hazelnuts or pistachios for any depreciation in their 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.”.

(3) The words “Turkish figs, hazelnuts and pistachios” used in the application of section 9 of the Act for the purposes of these Regulations which is effected by paragraph (2) shall, for those purposes, bear the meanings that those words respectively bear in these Regulations.

(4) Section 2 of the Act (extended meaning of “sale” etc.) shall apply in relation to section 9 of the Act so far as it applies for the purposes of these Regulations by virtue of paragraph (2).

(5) 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 subsection (b)(ii) there shall be substituted the following subsection:—
“(ii) is found by the authorised officer on or in any premises which the authorised officer may enter by virtue of regulation 4(2) of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control (Scotland) Regulations 2002;”;
- (c) the power to take samples under subsections (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) subsection (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 (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Scotland) Regulations 2002”.

(6) Where, pursuant to section 29(b) of the Act as applied by paragraph (5), an authorised officer has taken a sample of any Turkish figs, hazelnuts and pistachios it must be ensured 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 Annex II to Directive 98/53/EC;
- (b) an analysis of the sample is carried out 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^(a); and
 - (ii) meet the criteria specified in paragraph 4.3 of Annex II to Directive 98/53/EC as read with the notes thereto;
- (c) 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^(b); and

(a) O.J. L 372, 31.12.85, p.90.

(b) O.J. L 290, 24.11.93, p.14.

- (d) the reporting of the result of the analysis of that 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 Annex II to Directive 98/53/EC.

St Andrew's House,
Edinburgh
25th March 2002

MARY MULLIGAN
Authorised to sign by the Scottish Ministers

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 to the Scottish Ministers that the importation into Scotland of figs, hazelnuts and pistachios originating in, or consigned from, Turkey, may involve imminent risk of injury to health.

The Regulations implement Commission Decision 2002/80/EC imposing special conditions on the import of figs, hazelnuts and pistachios and certain products derived from figs, hazelnuts and pistachios originating in, or consigned from Turkey (O.J. No. L 34, 5.2.02, p.26) as amended by Commission Decision 2002/233/EC (O.J. No. L 78, 21.03.02, p.14).

The Regulations—

- (a) prohibit the importation of Turkish figs, hazelnuts and pistachios (as defined in regulation 2) which left Turkey on or after 11th March 2002, except where they are accompanied by Turkish Government health certificates and the results of official sampling and analysis, the importation takes place only through specified points of entry and the consignment is identified with a code corresponding with that specified on the health certificate and in the sampling and analysis results (regulation 3);
- (b) prohibit the importation of Turkish figs, hazelnuts and pistachios which left Turkey before 11th March 2002 and which are not accompanied by the documentation otherwise required, except where the importation takes place through a specified point of entry and the operator can show, by sampling and analysis of the consignment in the prescribed manner, that it does not contain aflatoxin B1 or total aflatoxin above the legally prescribed maximum levels (regulations 2 and 3);
- (c) specify the enforcement authorities (regulation 4); and
- (d) apply, with modifications, provisions of the Food Safety Act 1990 (regulation 5).

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

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