

2002 No. 425

FOOD

The Food (Peanuts from China) (Emergency Control) (Scotland) (No. 2) Regulations 2002

Made 12th September 2002

Laid before the Scottish Parliament 13th September 2002

Coming into force 13th September 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 (Peanuts from China) (Emergency Control) (Scotland) (No. 2) Regulations 2002 and shall come into force on 13th September 2002.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990(b) and, subject to paragraph (2), any expression used both in these Regulations and in the Act has the same meaning it bears in the Act;

“the Commission Decision” means Commission Decision 2002/79/EC(c) imposing special conditions on the import of peanuts and certain products derived from peanuts originating in or consigned from China as amended by Commission Decision 2002/233/EC(d) and by Commission Decision 2002/678/EC(e);

“Chinese peanuts” means—

- (a) peanuts falling within CN code 1202 10 90 or within CN code 1202 20 00;
- (b) roasted peanuts falling within CN code 2008 11 92 (in immediate packs of a net content exceeding 1 kg) or roasted peanuts falling within CN code 2008 11 96 (in immediate packs of a net content not exceeding 1 kg); and
- (c) peanuts falling within CN code 2008 11 94 (in immediate packs of a net content exceeding 1 kg) or peanuts falling within CN code 2008 11 98 (in immediate packs of a net content not exceeding 1 kg),

originating in, or consigned from, China;

(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. No. L 34, 5.2.02, p.21.

(d) O.J. No. L 78, 21.3.02, p.14.

(e) O.J. No. L 229, 27.8.02, p.33.

“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^(a) as amended by Commission Directive 2002/27/EC^(b);

“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 “Chinese peanuts” have the same meaning as in the Commission Decision.

Prohibition on import

3.—(1) Subject to paragraph (3), no person shall import into Scotland any Chinese peanuts 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 Chinese peanuts concerned; or
- (b) the derogation contained in Article 1a of the Commission Decision (which is concerned with consignments which left China before 11th March 2002) is satisfied in relation to the Chinese peanuts concerned.

(2) Subject to paragraph (3), no person shall import into Scotland any Chinese peanuts 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 Chinese peanuts which are in free circulation in that member State; and
 - (ii) from England, Wales or Northern Ireland of Chinese peanuts 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.

(5) For the purposes of determining whether or not any person is guilty of an offence under paragraph (4), any Chinese peanuts shall be presumed, until the contrary is proved, to be intended for human consumption or to be used as an ingredient in foodstuffs.

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—

- (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 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) The requirements are those specified in—
 - (a) Article 1.4 of the Commission Decision (which provision is concerned with documentary checks relating to consignments of Chinese peanuts);
 - (b) Article 1.5 and 1.6 of the Commission 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 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.

(a) O.J. No. L 201, 17.7.98, p.93.

(b) O.J. No. L 75, 16.3.02, p.44.

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 (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 subsection b(ii) there shall be substituted the following:—
“(ii) is found by the authorised officer on or in any premises which the authorised officer may enter by virtue of regulation 4(2)(b) of the Food (Peanuts from China) (Emergency Control) (Scotland) (No. 2) Regulations 2002;”;
- (c) the power to take samples under subsections (b) and (d) shall be limited to the taking of samples in accordance with 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 (Peanuts from China) (Emergency Control) (Scotland) (No. 2) Regulations 2002”.

(3) Where, pursuant to section 29(b) of the Act as applied by paragraph (2), an authorised officer has taken a sample of any Chinese peanuts, it shall 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 by a laboratory which complies with Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs^(a);
- (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^(b); 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 Annex II to Directive 98/53/EC.

(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 analysis and be signed by the analyst.

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

(b) O.J. L 372, 31.12.85, p.50.

(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.

Re-dispatch or destruction of illegal imports

6.—(1) If on an inspection or examination of any Chinese peanuts it appears to an authorised officer of a food authority that they have been imported in contravention of regulation 3(1) 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 Chinese peanuts outside the European Community within such reasonable period as shall be specified in the notice; or
- (b) (where such re-dispatch would in the opinion of the authorised officer involve serious risks to human health or where the period specified in a notice issued under sub-paragraph (a) has elapsed and the Chinese peanuts have not been re-dispatched) the destruction of the Chinese peanuts within such reasonable period as shall be specified in the notice.

(2) Any notice served under paragraph (1) shall state—

- (a) the right of appeal to the sheriff under paragraph (4); and
- (b) the period within which such an appeal may be brought.

(3) The person appearing to be the importer of Chinese peanuts in respect of which a notice has been served under paragraph (1) shall ensure that they are stored until re-dispatch or destruction under the supervision of the authorised officer at such place and under such conditions as the authorised officer may in the notice direct.

(4) Any person who is aggrieved by the decision of an authorised officer to serve a notice under paragraph (1) may appeal to the sheriff who may affirm or cancel the notice.

(5) The period within which such an appeal as is mentioned in paragraph (4) may be brought shall be 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and public holidays.

(6) Pending the determination of an appeal under paragraph (4), paragraph (3) shall apply to the storage of the Chinese peanuts concerned.

(7) If the sheriff allows an appeal under paragraph (4), the food authority shall compensate the owner of the Chinese peanuts concerned 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 paragraph (7) shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(9) 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.

(10) The costs of re-dispatch, storage and destruction of Chinese peanuts under this regulation shall be borne by the importer.

Revocation of the Food (Peanuts from China) (Emergency Control) (Scotland) Regulations 2002

7. The Food (Peanuts from China) (Emergency Control) (Scotland) Regulations 2002(a) are revoked.

St Andrew's House,
Edinburgh
12th September 2002

MARY MULLIGAN
Authorised to sign by the Scottish Ministers

(a) S.S.I. 2002/149.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and re-enact with amendments the Food (Peanuts from China) (Emergency Control) (Scotland) Regulations 2002. The revocation is effected by regulation 7.

The Regulations implement Commission Decision 2002/79/EC imposing special conditions on the import of peanuts and certain products derived from peanuts originating in, or consigned from China (O.J. No. L 34, 5.2.02, p.21), as amended by Commission Decision 2002/233/EC (O.J. No. L 78, 21.3.02, p.14) and by Commission Decision 2002/678/EC (O.J. No. L 229, 27.8.02, p.33).

The Regulations—

- (a) prohibit the importation of Chinese peanuts (as defined in regulation 2(1)) which left China on or after 11th March 2002, except where they are accompanied by Chinese Government health certificates and the results of official sampling and analysis, the importation takes place only through specified points of entry and the consignment and each of its constituent bags or other packaging are identified with a code corresponding with that specified on the health certificate and in the sampling and analysis results (regulations 2 and 3);
- (b) prohibit the importation of Chinese peanuts (as defined in regulation 2(1)) which left China before 11th March 2002 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 it does not contain aflatoxin B1 or total aflatoxin above the legally prescribed maximum levels (regulations 2 and 3);
- (c) provide for their enforcement (regulation 4);
- (d) apply, with modifications, provisions of the Food Safety Act 1990 (regulation 5); and
- (e) provide for re-dispatch or destruction of illegal imports of Chinese peanuts (regulation 6).

The principal changes effected by these Regulations are that—

- (a) the previous requirement that each consignment of Chinese peanuts be identified by a code is now applied (in the case of consignments leaving China after 1st September 2002) to each bag (or other type of packaging used) making up the consignment concerned;
- (b) the previous requirement that each consignment of Chinese peanuts be subjected to sampling and analysis in order to ensure compliance with Commission Decision 2002/79/EC is modified by providing that—
 - (i) only approximately 10% of such consignments selected at random 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 of the food authority must issue a notice in writing stating that sampling has taken place and stating the results of the analysis of the sample; and
- (c) an authorised officer of a food authority is empowered (subject to a right of appeal to a sheriff) to issue a notice ordering the re-dispatch or destruction of illegal imports of Chinese peanuts.

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

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(Scotland) (No. 2) Regulations 2002**

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