
SCOTTISH STATUTORY INSTRUMENTS

2003 No. 396

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

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⁽¹⁾;

- (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⁽²⁾, 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.

(2) O.J. No. L 372, 31. 12. 85, p.50.