

This Scottish Statutory Instrument has been made in consequence of a defect in S.S.I. 2003/396 and is being issued free of charge to all known recipients of that instrument.

SCOTTISH STATUTORY INSTRUMENTS

2003 No. 558

FOOD

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

Made - - - - *18th November 2003*
Laid before the Scottish
Parliament - - - - *18th November 2003*
Coming into force - - *12th December 2003*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾ and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citations and commencement

1. These Regulations may be cited as the Food (Brazil Nuts) (Emergency Control) (Scotland) Amendment Regulations 2003 and shall come into force on 12th December 2003.

Amendment of the Food (Brazil Nuts) (Emergency Control) (Scotland) Regulations 2003

2.—(1) The Food (Brazil Nuts) (Emergency Control) (Scotland) Regulations 2003⁽²⁾ shall be amended in accordance with the following provisions of this regulation.

(2) In regulation 2(b) (interpretation), for “(1)” there shall be substituted “(a)”.

(3) In regulation 3(1)(a) (prohibition on import), for “and 3.1” there shall be substituted “, 3.1 and 5”.

(4) In regulation 4(3)(c) (enforcement), for “in so far as it relates to the certification of copies of the health certificate and accompanying documents” there shall be substituted “of that Decision (which is concerned with the case where consignments are split)”.

(1) 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.

(2) S.S.I. 2003/396.

(5) In regulation 5(3) (application of various provisions of the 1990 Act and sampling and analysis), for “it shall be ensured” there shall be substituted “the authorised officer shall ensure”.

(6) For regulation 6 (disposal of illegal imports) there shall be substituted—

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

(2) 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 3 months.”.

(7) For regulation 7 (disposal of imports following sampling and analysis) there shall be substituted—

“7.—(1) If following sampling and analysis any Brazil nuts have been issued with an official document in accordance with Article 4.4 of the Commission Decision showing that the consignment does not comply with the provisions of Regulation (EC) No. 466/2001 as regards maximum levels for aflatoxin B1 and total aflatoxin, the authorised officer shall after appropriate consultation with a person appearing to be the importer serve on that person a notice ordering the disposal of the Brazil nuts in accordance with the requirements of Article 6 of the Commission Decision.

(2) 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.”.

(8) For regulation 8 (storage of imports) there shall be substituted—

“8.—(1) The person on whom a notice has been served under regulations 6 or 7 above shall ensure that the Brazil nuts to which the notice applies are stored until re dispatch or destruction under the supervision of the authorised officer at such places and under such conditions as the authorised officer may in the notice direct.

(2) The costs of such storage referred to in paragraph (1) and of the re-dispatch or destruction of the Brazil nuts under regulation 6 or 7 shall be borne by the importer.”.

(9) In regulation 9 (appeals)—

- (a) in paragraph (6), for “(6)” there shall be substituted “(5)”; and
- (b) paragraphs (7) and (8) shall be omitted.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to Scotland only, amend the Food (Brazil Nuts) (Emergency Control) (Scotland) Regulations 2003 ([S.S.I. 2003/396](#)) (“the principal Regulations”). The principal Regulations implemented Commission Decision [2003/493/EC](#) imposing special conditions on the import of Brazil Nuts in shell originating in or consigned from Brazil (O.J. No. L 168, 5.7.03, p.33).

Regulations 2(2) to (5) and (9)(a) correct minor errors in the principal Regulations. Regulations 2(6), (7) and (9)(b) transfer offence provisions from regulation 9 of the principal Regulations and consolidate these provisions with the substantive provisions to which they relate in regulations 6 and 7 of the principal Regulations. Regulation 2(8) and (9)(b) transfer provisions as to the costs of storage to regulation 8 from regulation 9 of the principal Regulations and clarify the provisions as to costs of re-dispatch or destruction under regulations 6 and 7 of the principal Regulations.

This instrument is being issued free of charge to all known recipients of the principal Regulations. No regulatory impact assessment has been prepared in relation to these Regulations.