

**2005 No.70**

**FOOD**

**The Food (Pistachios from Iran) (Emergency Control)  
(Scotland) Amendment Regulations 2005**

*Made* - - - - - *15th February 2005*

*Laid before the Scottish Parliament* *16th February 2005*

*Coming into force* - - - *17th February 2005*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 (a) and of 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 (Pistachios from Iran) (Emergency Control) (Scotland) Amendment Regulations 2005 and shall come into force on 17th February 2005.

(2) These Regulations extend to Scotland only.

**Amendments to the Food (Pistachios from Iran) (Emergency Control) (Scotland) Regulations 2003**

2.—(1) The Food (Pistachios from Iran) (Emergency Control) (Scotland) Regulations 2003(b) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 2(1) (interpretation)—

(a) for the definition of “the Commission Decision” substitute—

““the Commission Decision” means Commission Decision 2005/85/EC imposing special conditions on the import of pistachios and certain products derived from pistachios originating in, or consigned from Iran(c);”; and

(b) for the definition of “Directive 98/53/EC” substitute—

““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(d) as amended by Commission Directive 2002/27/EC(e), Commission Directive 2003/121/EC(f) and Commission Directive 2004/43/EC(g);”.

---

(a) 1972 c.68 (“the 1972 Act”). Section 2(2) was amended by the Scotland Act 1998 (c.46) (“the 1998 Act”), Schedule 8, paragraph 15(2) and (3). The functions conferred on the Minister of the Crown by section 2(2) of the 1972 Act, insofar as within devolved competence, were transferred to the Scottish Ministers by section 53 of the 1998 Act.

(b) S.S.I. 2003/414, amended by S.S.I. 2004/210.

(c) O.J. No. L 30, 3.2.05, p.12.

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

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

(f) O.J. No. L 332, 19.12.03, p.38.

(g) O.J. No. L 113, 20.4.04, p.14.

(3) For regulation 3(1) (prohibition on import) substitute–

“(1) Subject to paragraph (3), no person shall import into Scotland any Iranian pistachios unless the conditions specified in Article 1.1, 1.3 and (so far as applicable at the point of import) 1.7 of the Commission Decision are satisfied in relation to those pistachios.”.

(4) For regulation 4(3) (enforcement) substitute–

“(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 Iranian pistachios);
- (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; and
- (c) Article 1.7 of the Commission Decision (which is concerned with the case where consignments are split).”.

(5) For regulation 6 (re-dispatch or destruction of illegal imports) substitute–

“6.—(1) If, on an inspection or examination of any Iranian pistachios, it appears to an authorised officer of a food authority that they have been imported in contravention of regulation 3(2), or that they have been presented for import and would, if imported, contravene regulation 3(1), the authorised officer may after appropriate consultation with a person appearing to that officer to be the food business operator responsible for the consignment or its representative serve on that operator or representative a notice ordering–

- (a) where the re-dispatch of the pistachios outside the European Community would in the opinion of the authorised officer not involve serious risks to human health, such re-dispatch 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, the destruction of the pistachios within such reasonable period as shall be specified in the notice.

(2) If a notice has been served under paragraph (1)(a) and the pistachios concerned have not been re-dispatched outside the European Community in accordance with the terms of the notice, an authorised officer of the food authority whose authorised officer served the notice may, after appropriate consultation with the person appearing to be the food business operator responsible for the consignment or its representative, serve on that operator or representative a notice ordering the destruction of the pistachios within such reasonable period as shall be specified in the notice.

(3) Any notice served under paragraph (1) or (2) shall state–

- (a) the right of appeal to the sheriff under paragraph (5); and
- (b) the period within which such an appeal may be brought.

(4) The person on whom a notice has been served under paragraph (1) or (2) shall ensure that the pistachios 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.

(5) Any person who is aggrieved by a decision of an authorised officer to serve a notice under paragraph (1) or (2) may appeal to the sheriff, who may confirm or cancel the notice.

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

(7) Pending determination of an appeal under paragraph (5), paragraph (4) shall apply to the storage of the pistachios concerned.

(8) If the sheriff allows an appeal brought under paragraph (5) the authority concerned shall compensate the food business operator responsible for the pistachios concerned for any depreciation in their value resulting from the action taken by the authorised officer.

(9) Any disputed question as to the right to or the amount of any compensation payable under paragraph (8) shall be determined by a single arbiter appointed, failing agreement between the parties, by the sheriff.

(10) Any person who breaches the terms of a notice served under 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.”.

(6) After regulation 6 (re-dispatch or destruction of illegal imports) insert–

**“Costs of sampling, analysis etc.**

**6A.** The food business operator responsible for any Iranian pistachios shall pay to a food authority on demand any costs referred to in Article 3 of the Commission Decision incurred by the food authority in relation to those pistachios.”.

**Revocation of the Food (Pistachios from Iran) (Emergency Control) (Amendment) Order 1997**

**3.** The Food (Pistachios from Iran) (Emergency Control) (Amendment) Order 1997(a) is revoked.

St Andrew’s House,  
Edinburgh  
15th February 2005

*RHONA BRANKIN*  
Authorised to sign by the Scottish Ministers

---

(a) S.I. 1997/3046.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations, which extend to Scotland only, amend the Food (Pistachios from Iran) (Emergency Control) (Scotland) Regulations 2003 (S.S.I. 2003/414, as amended by S.S.I. 2004/210) (“the principal Regulations”). The principal Regulations implemented Commission Decision 97/830/EC repealing Commission Decision 97/613/EC and imposing special conditions on the import of pistachios and certain products derived from pistachios originating in, or consigned from Iran (O.J. No. L 343, 13.12.97, p.30) as last amended by Commission Decision 2004/429/EC (O.J. No. L 154, 30.4.04, p.20). The amendments made by these Regulations implement Commission Decision 2005/85/EC imposing special conditions on the import of pistachios and certain products derived from pistachios originating in, or consigned from Iran (O.J. No. L 30, 3.2.05, p.12), “the new Decision”. The new Decision repealed Commission Decision 97/830/EC.

The main differences between the new Decision and Commission Decision 97/830/EC are that—

- (a) Article 1.1 of the new Decision provides that the health certificate required to accompany a consignment of “Iranian pistachios” (defined in regulation 2(1) of the principal Regulations) shall be valid for import carried out no more than 4 months after the issue date of the health certificate; and
- (b) Article 3 of the new Decision provides that certain costs relating to the import controls on Iranian pistachios imposed by the Decision and the costs relating to official measures taken against non-compliant consignments of Iranian pistachios shall be borne by the person responsible for the consignment.

The change described in paragraph (a) above is effected by substituting a definition of the new Decision for the definition of Commission Decision 97/830/EC in regulation 2(1) of the principal Regulations and making consequential changes to regulations 3(1) and 4(3) of the principal Regulations (regulation 2(2)(a), (3) and (4)).

The change described in paragraph (b) above is effected by inserting a new regulation providing for recovery of costs by food authorities in the principal Regulations (regulation 2(6)).

Regulation 6 of the principal Regulations is amended to provide that pistachios not re-dispatched in accordance with the terms of a notice served under regulation 6(1)(a) can be the subject of a second notice requiring their destruction (regulation 2(5)).

These Regulations insert an updated definition of “Directive 98/53/EC”. They also revoke redundant measures relating to Commission Decision 97/830/EC (regulation 3).

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

£3.00

© Crown Copyright 2005

Printed in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, the Queen’s Printer for Scotland  
150 02/05 19593

