
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 64

**The Food (Star Anise from Third Countries)
(Emergency Control) (Scotland) Order 2002**

Application of various provisions of the Act

5.—(1) The following provisions of the Act shall apply for the purposes of this Order and any reference in those provisions to the Act or part thereof shall be construed for the purposes of this Order as a reference to this Order:—

- (a) section 3 (presumptions that food intended for human consumption);
- (b) section 20 (offences due to fault of another person);
- (c) section 33 (obstruction etc. of officers);
- (d) section 35(1) (punishment of offences) in so far as it relates to offences under section 33 as applied by sub-paragraph (c) above; and
- (e) section 44 (protection of officers acting in good faith).

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

“9.—(1) An authorised officer of a food authority may at all reasonable times inspect any star anise for human consumption or Japanese star anise which—

- (a) has been sold or is offered or exposed for sale; or
- (b) is in the possession of, or has 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 the star anise concerned has been imported into Scotland in contravention of article 3(1), or as the case may be, article 3(3) of the Food (Star Anise from Third Countries) (Emergency Control) (Scotland) Order 2002.

(3) The authorised officer may either—

- (a) give notice to the person in charge of the star anise concerned that, until the notice is withdrawn, the star anise concerned or any specified quantity of it—
 - (i) is not to be used for human consumption; and
 - (ii) either is not to be removed or is not to be removed except to some place specified in the notice; or
- (b) seize the star anise concerned and remove it in order to have it 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 of 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 is satisfied that the star anise concerned has not been imported in contravention of article 3(1) or, as the case may be, article 3(3) of the Food (Star Anise from Third Countries) (Emergency Control) (Scotland) Order 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 star anise concerned and remove it in order to have it dealt with by a sheriff.

(5) Where an authorised officer exercises the powers conferred by subsections (3)(b) or (4)(b) above, the authorised officer shall inform the person in charge of the star anise concerned of the intention to have it dealt with by a sheriff and any person who under section 35(2) of this Act might be liable to a prosecution in respect of the star anise concerned shall, if that person attends before the sheriff by whom the star anise concerned falls 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 star anise concerned falling to be dealt with under this section has been imported in contravention of article 3(1) or, as the case may be, article 3(3) of the Food (Star Anise from Third Countries) (Emergency Control) (Scotland) Order 2002, the sheriff shall condemn the star anise concerned and order—

- (a) the star anise concerned to be destroyed or to be so disposed of as to prevent it 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 star anise concerned.

(7) If a notice under subsection (3)(a) above is withdrawn, or the sheriff by whom the star anise concerned falls to be dealt with under this section refuses to condemn it, the food authority shall compensate the owner of the star anise concerned for any depreciation in its 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 expressions “food authority”, “star anise for human consumption” and “Japanese star anise” used in the application of section 9 of the Act for the purposes of this Order which is effected by paragraph (2) shall, for those purposes, bear the meanings that those expressions respectively bear in this Order.