2002 No. 140

FOOD

Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) Regulations (Northern Ireland) 2002

Made . . . . . *9th April 2002*

Coming into operation . . *11th April 2002*

The Department of Health, Social Services and Public Safety, being a Department designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on it by the said section 2(2) and of all other powers enabling it in that behalf, hereby makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) Regulations (Northern Ireland) 2002 and shall come into operation on 11th April 2002.

Interpretation

2.—(1) In these Regulations—

"the Order" means the Food Safety (Northern Ireland) Order 1991, and, subject to paragraph (2), any expression used both in these Regulations and in the Order has the meaning it bears in the Order;

"the Commission Decision" means Commission Decision 2002/80/EC(**c**) imposing special conditions on the import of figs, hazelnuts and pistachios and certain products derived thereof originating in or consigned from Turkey as amended by Commission Decision 2002/233/EC(**d**);

"controlled Turkish products" means Turkish products which are intended for human consumption or to be used as an ingredient in foodstuffs;

"the Department" means the Department of Health, Social Services and Public Safety;

"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(**e**);

"free circulation" has the same meaning as in Article 23.2, as read with Article 24, of the Treaty establishing the European Community;

"Turkish products" means products of the categories to which Article 1.1 of the Commission Decision applies and which originate in or are consigned from Turkey.

(2) Any term used in the definition of "controlled Turkish products" or "Turkish products" in paragraph (1) has the same meaning as in the Commission Decision.

Prohibition of import

3.—(1) Subject to paragraph (3), no person shall import any controlled Turkish products unless—

(*a*) the conditions specified in Article 1.1 and 1.3 of the Commission Decision are satisfied in relation to those products; or

(**a**) S.I. 2000/2812
(**b**) 1972 c. 68
(**c**) O.J. No. L34, 5.2.2002, p. 26
(**d**) O.J. No. L78, 21.3.2002, p.14
(**e**) O.J. No. L201, 17.7.1998, p. 93

(*b*) the derogation contained in Article 1a of the Commission Decision (which is concerned with consignments which left Turkey prior to 11th March 2002) is satisfied in relation to them.

(2) Subject to paragraph (3), no person shall import any controlled Turkish products, except through a point of entry listed in Annex II to the Commission Decision.

(3) Neither paragraph (1) nor paragraph (2) shall be taken to prohibit the import from a member State of any controlled Turkish products which are in free circulation in that State.

(4) For the purposes of this regulation, any Turkish products shall be presumed until the contrary is proved to be controlled Turkish products.

(5) 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.

Enforcement

4.—(1) These Regulations shall be enforced and executed by each district council within its district.

(2) For the purposes of the exercise of the duty referred to in paragraph (1), an authorised officer shall have the same powers of entry as are bestowed on an authorised officer by Article 33 of the Order for purposes connected with the Order or Regulations or orders under the Order.

(3) Each district council shall give such assistance and information to the Department and the Food Standards Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

Application of various provisions of the Order

5.—(1) The following provisions of the Order shall apply for the purposes of these Regulations and any reference in those provisions to the Order shall be construed for the purposes of these Regulations as a reference to these Regulations—

(*a*) Article 19 (offences due to fault of another person);

(*b*) Article 34 (obstruction, etc., of officers);

(*c*) Article 36(1) (punishment of offences) in so far as it relates to offences under Article 34(1) and (2) as applied by sub-paragraph (*b*).

(2) Subject to paragraph (3), Article 8 of the Order (inspection and seizure of suspected food) shall apply for the purposes of these Regulations as if it read as follows—

"**8.**—(1) An authorised officer may at all reasonable times inspect any controlled Turkish products which—

(*a*) have been sold or are offered or exposed for sale; or

(*b*) are in the possession of, or have been deposited with or consigned to, any person for the purpose of sale or of preparation for sale.

(2) Paragraphs (3) to (8) shall apply where, whether or not on an inspection carried out under paragraph (1), it appears to an authorised officer that any controlled Turkish products have been imported in contravention of Article 3(1) or (2) of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) Regulations (Northern Ireland) 2002.

(3) The authorised officer may either—

(*a*) give notice to the person in charge of the products that, until the notice is withdrawn, the products or any specified quantity of them—

(i) are not to be used for human consumption, and

(ii) either are not to be removed or are not to be removed except to some place specified in the notice; or

(*b*) seize the products and remove them in order to have them dealt with by a justice of the peace;

and any person who knowingly contravenes the requirements of a notice under sub-paragraph (*a*) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(4) Where the authorised officer exercises the powers conferred by paragraph (3)(*a*), he shall, as soon as is reasonably practicable and in any event within 21 days, determine whether or not he is satisfied that the products have not been imported in contravention of Article 3(1) or (2) of the aforesaid Regulations and—

(*a*) if he is so satisfied, shall forthwith withdraw the notice;

(*b*) if he is not so satisfied, shall seize the products and remove them in order to have them dealt with by a justice of the peace.

(5) Where an authorised officer exercises the powers conferred by paragraph (3)(*b*) or (4)(*b*), he shall inform the person in charge of the products of his intention to have them dealt with by a justice of the peace and—

(*a*) any person who under regulation 3(5) of the aforesaid Regulations might be liable to a prosecution in respect of the products shall, if he attends before the justice of the peace by whom the products fall to be dealt with, be entitled to be heard and to call witnesses; and

(*b*) that justice of the peace may, but need not, be a member of the court before which any person is proceeded against for an offence consisting of a contravention of regulation 3(1) or (2) of the aforesaid Regulations in relation to those products.

(6) If it appears to a justice of the peace, on the basis of such evidence as he considers appropriate in the circumstances, that any products falling to be dealt with by him under this Article have been imported in contravention of regulation 3(1) or (2) of the aforesaid Regulations, he shall condemn the products and order—

(*a*) the products to be destroyed or to be so disposed of as to prevent them 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 products.

(7) If a notice under paragraph (3)(*a*) is withdrawn, or the justice of the peace by whom any products fall to be dealt with under this Article refuses to condemn them, the district council shall compensate the owner of the products 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 arbitrator appointed, failing agreement between the parties, by the Department; and the provisions of the Arbitration Act 1996(**a**) shall apply accordingly.

(9) For the purposes of this Article, any Turkish products shall be presumed until the contrary is proved to be controlled Turkish products.".

(3) The expressions "controlled Turkish products", "for human consumption" and "Turkish products", which are used in Article 8 of the Order so far as it applies for the purposes of these Regulations by virtue of paragraph (2), shall, for those purposes, bear the meanings that those expressions respectively bear in these Regulations.

(4) Articles 2(4) and 3 of the Order (extended meaning of "sale" etc.) shall apply in relation to Article 8 of the Order so far as it applies for the purposes of these Regulations by virtue of paragraph (2).

(5) Article 29 of the Order (procurement of samples) shall apply for the purposes of these Regulations with the modifications that—

(*a*) for paragraph (*b*)(ii) there shall be substituted the following provision—

"(ii) is found by him on or in any premises which he is authorised to enter by virtue of regulation 4(2) of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) Regulations (Northern Ireland) 2002;";

(**a**) 1996 c. 23

(*b*) 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;

(*c*) paragraph (*c*) shall be omitted; and

(*d*) for "any of the provisions of this Order or of regulations or orders made under it" in paragraph (*d*) there shall be substituted "the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) Regulations (Northern Ireland) 2002".

(6) Where, pursuant to Article 29(*b*) of the Order as applied by paragraph (5), an authorised officer has taken a sample of any products he believes to be controlled Turkish products, he shall ensure 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 that Annex;

(*b*) an analysis of the sample is carried out 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(**a**), and

(ii) meet the criteria specified in paragraph 4.3 of Annex II to Directive 98/53/EC as read with the notes thereto;

(*c*) 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(**b**); and

(*d*) the reporting of the result of the analysis of that 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.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 9th April 2002.

(L.S.)

Denis McMahon
A Senior Officer of the Department of Health,
Social Services and Public Safety

(**a**) O.J. No. L372, 31.12.85, p. 90.
(**b**) O.J. No. L290, 24.11.93, p. 14

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations implement Commission Decision 2002/80/EC imposing special conditions on the import of figs, hazelnuts and pistachios and certain products derived thereof originating in or consigned from Turkey (O.J. No. L34, 5.2.2002, p. 26), as amended by Commission Decision 2002/233/EC (O.J. No. L78, 21.3.2002, p. 14). The categories of products which are subject to those conditions are specified in Article 1.1 of Decision 2002/80/EC.

The Regulations—

(*a*) prohibit the importation of any "controlled Turkish products" (defined in regulation 2(1)), except where—

(i) they are accompanied by a Turkish Government health certificate and the results of official sampling and analysis, the importation takes place only through a specified point of entry, and the consignment is identified with a code corresponding with that specified on the health certificate and on the accompanying report containing the sampling and analysis results, or

(ii) (even though they are not accompanied by a Turkish Government health certificate or the results of official sampling and analysis) they left Turkey before 11th March 2002, the operator shows, by means of sampling and analysis in the prescribed manner, that the levels of aflatoxin B1 and total aflatoxin in the products do not exceed the maximum permitted levels, and the importation takes place only through a specified point of entry (regulations 2 and 3);

(*b*) specify the enforcement authority (regulation 4); and

(*c*) apply, with modifications, provisions of the Food Safety (Northern Ireland) Order 1991 (regulation 5).

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