Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Food (Pistachios from Iran) (Emergency Control) (Scotland) Amendment Regulations 2005. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

SCOTTISH STATUTORY INSTRUMENTS

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 (**1**) 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.

Commencement Information

I1 Reg. 1 in force at 17.2.2005, see **reg. 1(1)**

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

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

(2) In regulation 2(1) (interpretation)–

(a) for the definition of "the Commission Decision" substitute–

(**1**) 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.

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

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""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(**3**);"; 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(**4**) as amended by Commission Directive 2002/27/EC(**5**), Commission Directive 2003/121/EC(**6**) and Commission Directive 2004/43/EC(**7**);".

(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

(**3**) O.J. No. L 30, 3.2.05, p.12.
(**4**) O.J. No. L 201, 17.7.98, p.93.
(**5**) O.J. No, L 75, 16.3.02, p.44
(**6**) O.J. No. L 332, 19.12.03, p.38.
(**7**) O.J. No. L 113, 20.4.04, p.14.

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.”.

Commencement Information

I2 Reg. 2 in force at 17.2.2005, see **reg. 1(1)**

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

3. The Food (Pistachios from Iran) (Emergency Control) (Amendment) Order 1997(**8**) is revoked.

Commencement Information

I3 Reg. 3 in force at 17.2.2005, see **reg. 1(1)**

(**8**) S.I.1997/3046.