SCOTTISH STATUTORY INSTRUMENTS

2002 No. 424

FOOD

The Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Scotland) (No. 2) Regulations 2002

Made - - - -	*12th September 2002*
Laid before the Scottish Parliament - - - -	*13th September 2002*
Coming into force - -	*13th September 2002*

The Scottish Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972(**1**) and 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 (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Scotland) (No. 2) Regulations 2002 and shall come into force on 13th September 2002.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations–

"the Act" means the Food Safety Act 1990(**2**) and, subject to paragraph (2), any expression used both in these Regulations and in the Act has the same meaning it bears in the Act;

"the Commission Decision" means Commission Decision 2002/80/EC(**3**) imposing special conditions on the import of figs, hazelnuts and pistachios and certain products derived from figs, hazelnuts and pistachios originating in or consigned from Turkey, as amended by Commission Decision 2002/233/EC(**4**) and by Commission Decision 2002/679/EC(**5**);

(**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**) 1990 c. 16.
(**3**) O.J. No. L 34, 5.2.02, p.26.
(**4**) O.J. No. L 78, 21.3.02, p.14.
(**5**) O.J. No. L 229, 27.8.02, p.37.

"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(**6**) as amended by Commission Directive 2002/27/EC(**7**);

"Turkish figs, hazelnuts and pistachios" means–

(a) dried figs falling within CN code 0804 20 90;

(b) hazelnuts (Corylus sp) in shell or shelled falling within CN code 0802 21 00 or 0802 22 00;

(c) pistachios falling within CN code 0802 50 00;

(d) mixtures of nuts or dried fruits falling within CN code 0813 50 and containing figs, hazelnuts or pistachios; and

(e) fig paste and hazelnut paste falling within CN code 2007 99 98;

(f) hazelnuts, figs and pistachios, prepared or preserved, including mixtures falling within CN code 2008 19,

originating in, or consigned from, Turkey;

"free circulation" has the same meaning as in Article 23.2 of the Treaty establishing the European Community.

(2) In these Regulations, any terms used in the definition of "Turkish figs, hazelnuts and pistachios" have the same meaning as in the Commission Decision.

Prohibition on import

3.—(1) Subject to paragraph (3), no person shall import into Scotland any Turkish figs, hazelnuts and pistachios which are intended for human consumption or to be used as an ingredient in foodstuffs unless–

(a) the conditions specified in Article 1.1 and 1.3 of the Commission Decision are satisfied in relation to the Turkish figs, hazelnuts and pistachios concerned; or

(b) the derogation contained in Article 1a of the Commission Decision (which is concerned with consignments which left Turkey before 11th March 2002) is satisfied in relation to the Turkish figs, hazelnuts and pistachios concerned.

(2) Subject to paragraph (3), no person shall import into Scotland any Turkish figs, hazelnuts or pistachios which are intended for human consumption or to be used as an ingredient in foodstuffs, other than through a point of entry listed in Annex II to the Commission Decision.

(3) Paragraphs (1) and (2) shall not be taken to prohibit the bringing into Scotland–

(i) from another member State of the European Community of Turkish figs, hazelnuts and pistachios which are in free circulation in that member State; and

(ii) from England, Wales or Northern Ireland of Turkish figs, hazelnuts and pistachios which have been imported into the United Kingdom in accordance with the Commission Decision.

(4) 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.

(5) For the purposes of determining whether or not any person is guilty of an offence under paragraph (4), any Turkish figs, hazelnuts and pistachios shall be presumed, until the contrary is proved, to be intended for human consumption or to be used as an ingredient in foodstuffs.

(**6**) O.J. No. L 201, 17.7.98, p.93.
(**7**) O.J. No. L 75, 16.3.02, p.44.

Enforcement

4.—(1) It shall be the duty of each food authority to enforce and execute these Regulations within its area.

(2) For the purposes of the exercise of the duty referred to in paragraph (1), an authorised officer of a food authority shall–

(a) ensure that the requirements referred to in paragraph (3) are adhered to; and

(b) have the same powers of entry as are bestowed on an authorised officer of an enforcement authority by section 32 of the Act for purposes connected with the Act or Regulations or Orders made under the Act.

(3) The requirements are those specified in–

(a) Article 1.4 of the Commission Decision (which provision is concerned with documentary checks relating to consignments of Turkish figs, hazelnuts and pistachios); and

(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.

(4) Each food authority shall give such assistance and information to the Food Standards Agency as it may reasonably request in connection with the execution and enforcement of these Regulations.

Application of various provisions of the Act

5.—(1) The following provisions of the Act shall apply for the purposes of these Regulations and any reference in those provisions to the Act or any Part thereof, shall be construed for the purposes of these Regulations as a reference to these Regulations:–

(a) section 20 (offences due to fault of another person);

(b) section 33 (obstruction etc. of officers);

(c) section 35(1) to (3) (punishment of offences) in so far as it relates to offences under section 33(1) and (2) as applied by sub-paragraph (b);

(d) section 36 (offences by bodies corporate);

(e) section 36A (offences by Scottish partnerships); and

(f) section 44 (protection of officers acting in good faith).

(2) Section 29 of the Act (procurement of samples) shall apply for the purposes of these Regulations with the modifications that–

(a) for "an enforcement authority" there shall be substituted "a food authority";

(b) for subsection (b)(ii) there shall be substituted the following:–

"(ii) is found by the authorised officer on or in any premises which the authorised officer may enter by virtue of regulation 4(2)(b) of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Scotland) (No. 2) Regulations 2002;";

(c) the power to take samples under subsections (b) and (d) shall be limited to the taking of samples in accordance with–

(i) in the case of Turkish figs and pistachios, the methods of taking samples described or referred to in Annex I to Directive 98/53/EC; and

(ii) in the case of Turkish hazelnuts, those methods but subject to the modifications specified in the third sub-paragraph of Article 1.6 of the Commission Decision;

(d) subsection (c) shall be omitted; and