WELSH STATUTORY INSTRUMENTS

2003 No. 2288 (W.227)

FOOD, WALES

The Food (Pistachios from Iran) (Emergency Control) (Wales) (No.2) Regulations 2003

Made - - - -	*5th September 2003*
Coming into force - -	*6th September 2003*

The National Assembly for Wales, being designated [F1] for the purposes of section 2(2) of the European Communities Act 1972 [F2] in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on it by that section, makes the following Regulations:

F1 S.I. 1999/2788.
F2 1972 c. 68.

Title, commencement and application

1.—(1) These Regulations may be cited as the Food (Pistachios from Iran) (Emergency Control) (Wales) (No.2) Regulations 2003 and shall come into force on 6th September 2003.

(2) These Regulations apply to Wales only.

Interpretation

2.—(1) In these Regulations —

"the Act" ("*y Ddeddf*") means the Food Safety Act 1990 [F3];

"CN code number" ("*Rhif y cod CN*") means a code number of the combined nomenclature established by Council Regulation (EEC) No. 2658/87 on the tariff and statistical nomenclature and on the Common Customs tariff [F4];

[[F5]"the Commission Decision" ("*Penderfyniad y Comisiwn*") 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;**]**

"Iranian pistachios" ("*cnau pistasio Iranaidd*") means —

(a) pistachios falling within CN code 0802 50 00; and

(b) roasted pistachios falling within CN code 2008 19 13 or code 2008 19 93,

and any products derived from such pistachios or roasted pistachios originating in, or consigned from, Iran;

[[F6]"Directive 98/53/EC" ("*Cyfarwyddeb 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 as last amended by Commission Directive 2004/43/EC;**]**

"food authority" ("*awdurdod bwyd*") has the same meaning as in section 5(1A) and (3)(a) and (b) of the Food Safety Act 1990;

"free circulation" ("*cylchrediad rhydd*") has the same meaning as in Article 23.2, as read with Article 24, of the Treaty establishing the European Community; and

"port health authority" ("*awdurdod iechyd porthladd*") means in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984 [F7], a port health authority for that district constituted by order under section 2(4) of that Act.

(2) Any term used in the definition of "Iranian pistachios" in paragraph (1) has the same meaning as in the Commission Decision.

F3 1990 c. 16.
F4 OJ No. L256, 7.9.87, p.1.
F5 Words in reg. 2(1) substituted (10.2.2005) by The Food (Pistachios from Iran) (Emergency Control) (Wales) (No.2) (Amendment) Regulations 2005 (S.I. 2005/257), regs. 1, **2(2)(a)**
F6 Words in reg. 2(1) substituted (10.2.2005) by The Food (Pistachios from Iran) (Emergency Control) (Wales) (No.2) (Amendment) Regulations 2005 (S.I. 2005/257), regs. 1, **2(2)(b)**
F7 1984 c. 22.

Prohibition on import

3.—**[**[F8](1) Subject to paragraph (3), no person is to import into Wales any Iranian pistachios unless —

(a) the conditions specified in Article 1.1, 3, 5 and (so far as applicable at the point of import) 7 of the Commission Decision are satisfied in relation to those pistachios; and

(b) the costs resulting from sampling, analysis, storage and issuing of accompanying official documents and of copies of health certificates and accompanying documents pursuant to Article 1.4 to 7 of the Commission Decision have been met.**]**

(2) Subject to paragraph (3), no person shall import into Wales any Iranian pistachios, 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 into Wales from a member State of any Iranian pistachios which are in free circulation in that State.

(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.

F8 Reg. 3(1) substituted (10.2.2005) by The Food (Pistachios from Iran) (Emergency Control) (Wales) (No.2) (Amendment) Regulations 2005 (S.I. 2005/257), regs. 1, **2(3)**

Enforcement

4.—(1) Subject to paragraph (2), it shall be the duty of each port health authority to execute and enforce these Regulations within its district.

(2) In relation to any place which is not situated in the district of a port health authority, these Regulations shall be executed and enforced by the food authority for the area in which that place is situated.

(3) For the purposes of the exercise of the duty referred to in paragraph (1) or, as the case may be, (2), an authorised officer of the authority concerned shall —

(a) ensure that the requirements referred to in paragraph (4) 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.

[F9(4) 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 that Decision (which is 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 that Decision (which is concerned with the case where consignments are split).**]**

(5) Each port health authority and food authority shall give such assistance and information to the National Assembly for Wales and the Food Standards Agency as they may reasonably request in connection with the execution and enforcement of these Regulations.

F9 Reg. 4(4) substituted (10.2.2005) by The Food (Pistachios from Iran) (Emergency Control) (Wales) (No.2) (Amendment) Regulations 2005 (S.I. 2005/257), regs. 1, **2(4)**

Application of various provisions of the Food Safety Act 1990 and sampling and analysis

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

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

(b) section 33(1) (obstruction etc. of officers);

(c) section 33(2), with the modification that the reference to "any such requirement as is mentioned in subsection (1)(b) above" shall be deemed to be a reference to any such requirement as is mentioned in section 33(1)(b) as applied by sub-paragraph (b);

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

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

(f) section 36 (offences by bodies corporate); and

(g) 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 the words "an enforcement authority" there shall be substituted the words " ;a food authority or as the case may be a port health authority ";

(b) for subsection (b)(ii) there shall be substituted the following provision —

"(ii) is found by him at any premises which he is authorised to enter by virtue of regulation 4(3)(b) of the Food (Pistachios from Iran) (Emergency Control) (Wales) (No.2) Regulations 2003";

(c) the power to take samples under subsections (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;

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

(e) for the words "any of the provisions of this Act or of regulations or orders made under it" in subsection (d) there shall be substituted the words " ;the Food (Pistachios from Iran) (Emergency Control) (Wales) (No.2) Regulations 2003 ".

(3) Where, pursuant to section 29(b) of the Act as applied for the purposes of these Regulations by paragraph (2), an authorised officer has taken a sample of any Iranian pistachios, that officer 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 at a laboratory which complies with Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs [F10];

(c) that analysis is carried out as soon as practicable by a suitably qualified analyst 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 [F11], and

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

(d) the reporting of the result of that analysis —

(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.

(4) Before an analyst agrees to analyse a sample in accordance with paragraph (3)(c) that analyst may demand the payment in advance of such reasonable fee as he or she may require.

(5) An analyst who has analysed a sample in accordance with paragraph (3)(c) shall give to the person by whom it was submitted a certificate which shall both specify the result of the analysis and be signed by the analyst.

(6) In any proceedings under these Regulations, the production by one of the parties of —

(a) a document purporting to be a certificate given by an analyst under paragraph (5); or

(b) a document supplied to him by the other party as being a copy of such a certificate,

shall be sufficient evidence of the facts stated in it unless, in a case falling within sub-paragraph (a), the other party requires that the analyst shall be called as a witness.

(7) Where a sample procured under section 29 of the Act as applied for the purposes of these Regulations by paragraph (2) has been analysed in accordance with paragraph (3)(b) and (c), the