WELSH STATUTORY INSTRUMENTS

# 2003 No. 2254 (W.224)

# FOOD, WALES

## The Food (Brazil Nuts) (Emergency Control) (Wales) Regulations 2003

*Made - - - - 2nd September 2003*

*Coming into force - - 5th 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 (Brazil Nuts) (Emergency Control) (Wales) Regulations 2003 and shall come into force on 5th September 2003.

(2) These Regulations apply in relation to Wales only.

### Interpretation

**2.**—(1) In these Regulations —

"the Act" ("*y Ddeddf*") means the Food Safety Act 1990 [F3] and, save where the context otherwise requires and subject to paragraph (2), any expression used both in these Regulations and in the Act has the meaning it bears in the Act;

"Brazil nuts" ("*cnau Brasil*") means Brazil nuts in shell falling within CN code 0801 21 00 originating in or consigned from Brazil [F4];

**[**[F5]"the Commission Decision" ("*Penderfyniad y Comisiwn*") means Commission Decision 2003/493/EC imposing special conditions on the import of Brazil nuts in shell originating in or consigned from Brazil as amended by Commission Decision 2004/428/EC amending Decision 2003/493/EC as regards the points of entry through which Brazil nuts in shell originating in or consigned from Brazil may only be imported into the Community;**]**

"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 [F6] as amended by Commission Decision 2002/27/EC[F7];

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

"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 [F8], 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 "Brazil nuts" in paragraph (1) has the same meaning as in the Commission Decision.

**F3** 1990 c. 16.
**F4** CN Code is the code number of the "combined nomenclature" established by Council Regulation 2658/87 on the tariff and statistical nomenclature and on the customs tariff (OJ No. L256, 7.9.87, p.1).
**F5** Words in reg. 2(1) substituted (31.7.2004) by The Food (Emergency Control) (Wales) (Miscellaneous Amendments) (No. 2) Regulations 2004 (S.I. 2004/1804), regs. 1, **4**
**F6** OJ No. L201, 17.7.1998, p.93.
**F7** OJ No. L75, 16.3.2002, p.44.
**F8** 1984 c. 22.

### Prohibition on import

**3.**—(1) Subject to paragraph (3), no person shall import into Wales any Brazil nuts unless —

(a) the conditions specified in Articles 1.1, 4.1, 4.2 and Article 5 of the Commission Decision are satisfied in relation to those Brazil nuts; or

(b) the derogation contained in Article 1.2 of the Commission Decision (which is concerned with consignments which left Brazil prior to 5th July 2003) is satisfied in relation to them.

(2) Subject to paragraph (3), no person shall import into Wales any Brazil nuts, 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 Brazil nuts 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.

### 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.

(4) The requirements are those specified in —

(a) Articles 1.1 and 4.1 of the Commission Decision (which are concerned with documentary checks relating to consignments of Brazil nuts);

(b) Article 4.2 and 4.4 of that Decision (which is concerned with the sampling and analysis of such consignments); and

(c) Article 5 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.

**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 (Brazil Nuts) (Emergency Control) (Wales) 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 (Brazil Nuts) (Emergency Control) (Wales) Regulations 2003 ".