WELSH STATUTORY INSTRUMENTS

2002 No. 2295 (W.224)

FOOD, WALES

The Food (Peanuts from China) (Emergency Control) (Wales) (No. 2) Regulations 2002

Made - - - -	*4th September 2002*
Coming into force - -	*9th September 2002*

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).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Food (Peanuts from China) (Emergency Control) (Wales) (No. 2) Regulations 2002 and shall come into force on 9 September 2002.

(2) These Regulations apply to Wales only.

Interpretation

2.—(1) In these Regulations—

"the Act" 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;

[[F4]"the Commission Decision" means Commission Decision 2002/79/EC imposing special conditions on the import of peanuts and certain products derived from peanuts originating in or consigned from China as amended by Commission Decision 2002/233/EC, Commission Decision 2002/678/EC, Commission Decision 2003/550/EC and Commission Decision 2004/429/EC amending Decisions 97/830/EC, 2000/49/EC, 2002/79/EC and 2002/80/EC as regards the points of entry through which the products concerned may only be imported into the Community;**]**

"Chinese peanuts" means—

(a) peanuts falling within CN code 1202 10 90 or within CN code 1202 20 00;

(b) roasted peanuts falling within CN code 2008 11 92 (in immediate packs of a net content exceeding 1 kg) or roasted peanuts falling within CN code 2008 11 96 (in immediate packs of a net content not exceeding 1 kg); and

(c) peanuts falling within CN code 2008 11 94 (in immediate packs of a net content exceeding 1kg) or peanuts falling within CN code 2008 11 98 (in immediate packs of a net content not exceeding 1 kg),

originating in, or consigned from, China;

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

"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 [F5] as amended by Commission Decision 2002/27/EC[F6];

"food authority" does not include a port health authority;

"free circulation" 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" 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 "Chinese peanuts" or "controlled Chinese peanuts" in paragraph (1) has the same meaning as in the Commission Decision.

F3 1990 c. 16.
F4 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, **2**
F5 OJ No. L201, 17.7.1998, p.93.
F6 OJ No. L75, 16.3.2002, p.44.
F7 1984 c. 22.

Prohibition of import

3.—(1) Subject to paragraph (3), no person shall import into Wales any controlled Chinese peanuts.

(2) Subject to paragraph (3), no person shall transport into Wales, from any other part of the United Kingdom, any controlled Chinese peanuts other than controlled Chinese peanuts which have lawfully been imported into the United Kingdom through a point of entry listed in Annex II to the Commission Decision in accordance with the provisions in the legislation in force in relation thereto in that part of the United Kingdom in which that point of entry is situated.

(3) Neither paragraph (1) nor paragraph (2) shall be taken to prohibit the import into Wales from a member State of any controlled Chinese peanuts 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.

(5) For the purpose of determining whether or not any person is guilty of an offence consisting of a breach of paragraph (4), any Chinese peanuts shall be presumed until the contrary is proved to be controlled Chinese peanuts.

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) Article 1.4 of the Commission Decision (which is concerned with documentary checks relating to consignments of controlled Chinese peanuts); and

(b) Article 1.5 and 1.6 of that 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.

(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 (Peanuts from China) (Emergency Control) (Wales) (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 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 (Peanuts from China) (Emergency Control) (Wales) (No. 2) Regulations 2002 ".

(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 controlled Chinese peanuts, 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 at a laboratory which complies with Council Directive 93/99/EEC on the subject of additional measures concerning the official control of foodstuffs [F8]

(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 [F9], 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) he may demand the payment in advance of such reasonable fee as he 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 owner shall be entitled on request to be supplied with a copy of the certificate of analysis by the authority which, by virtue of regulation 4(1) or (2), has the duty of enforcing them.

(8) Nothing in paragraph (3)(c) shall be taken as preventing an analysis being made by a person acting under the analyst's direction.

F8 OJ No. L290, 24.11.93, p.14.