STATUTORY RULES OF NORTHERN IRELAND

2005 No. 30

FOOD

The Food (Pistachios from Iran) (Emergency Control) (Amendment) Regulations (Northern Ireland) 2005

Made - - - -	*8th February 2005*
Coming into operation	*9th February 2005*

The Department of Health, Social Services and Public Safety(**1**), being a Department designated(**2**) for the purposes of section 2(2) of the European Communities Act 1972(**3**) in relation to measures relating to food, in exercise of the powers conferred on it by the said section 2(2) and of every other power enabling it in that behalf, hereby makes the following Regulations:

Title, commencement and interpretation

1.—(1) These Regulations may be cited as the Food (Pistachios from Iran) (Emergency Control) (Amendment) Regulations (Northern Ireland) 2005 and shall come into operation on 9th February 2005.

(2) The Interpretation Act (Northern Ireland) 1954(**4**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

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

2.—(1) The Food (Pistachios from Iran) (Emergency Control) Regulations (Northern Ireland) 2003(**5**) shall be amended in accordance with paragraphs (2) to (5).

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

(a) for the definition of "the Commission Decision" there shall be substituted the following definition –

> ""the Commission Decision" means the Commission Decision of 26th January 2005 imposing special conditions on the import of pistachios and certain products derived from pistachios originating in, or consigned from Iran(**6**);"; and

(**1**) Formerly the Department of Health and Social Services; *see*S.I.1999/283 (N.I. 1), Article 3
(**2**) S.I. 2003/2901
(**3**) 1972 c. 68
(**4**) 1954 c. 33 (N.I.)
(**5**) S.R. 2003 No. 360 amended by S.R. 2004 No. 205
(**6**) O.J. No. L30, 3.2.05, p. 12

(b) for the definition of "Directive 98/53/EC" there shall be substituted the following definition –

""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(**7**) as last amended by Commission Directive 2004/43/EC(**8**);".

(3) For paragraph (1) of regulation 3 (prohibition on import) there shall be substituted the following paragraph –

"(1) Subject to paragraph (3), no person shall import into Northern Ireland 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.".

(4) For paragraph (3) of regulation 4 (enforcement) there shall be substituted the following paragraph –

"(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 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) For regulation 6 (re-dispatch or destruction of illegal imports) there shall be substituted the following regulation –

"**6.**—(1) If on an inspection or examination of any Iranian pistachios it appears to an authorised officer that they have been imported in contravention of paragraph (1) or (2) of regulation 3 he may after appropriate consultation with a person appearing him to be the importer of the pistachios serve on that person a notice requiring –

(a) the re-dispatch of the pistachios outside the European Community within such reasonable period as shall be specified in the notice if all costs related to official measures taken in respect of those pistachios and identified in that notice have been met; or

(b) if –

(i) such re-dispatch would in his opinion involve serious risks to human health, or

(ii) such costs have not been met,

the destruction of the pistachios within such reasonable period as shall be specified in the notice.

(**7**) O.J. No. L201, 17.7.98, p. 93
(**8**) O.J. No. L113, 20.4.2004, p. 14

(2) If a notice has been served under sub-paragraph (a) of paragraph (1) and the pistachios concerned have not been re-dispatched outside the European Community within the period specified in the notice, an authorised officer may after appropriate consultation with the person appearing to him to be the importer of the pistachios serve on that person a notice requiring the destruction of the pistachios within such reasonable period as shall be specified in the notice.

(3) A notice served under paragraph (1) or (2) shall state –

(a) the right of appeal to a court of summary jurisdiction; and

(b) the period within which such an appeal may be brought.

(4) The person appearing to be the importer of pistachios from Iran in respect of which a notice has been served under paragraph (1) or (2) shall ensure that they 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 a court of summary jurisdiction, which shall determine whether the notice should be upheld or set aside.

(6) The period within which such an appeal as is mentioned in paragraph (5) may be brought shall be 6 days, exclusive of Saturdays, Sundays and public holidays, from the date on which notice of the decision was served on the person desiring to appeal.

(7) The procedure on an appeal to a court of summary jurisdiction under paragraph (5) shall be by way of notice under Part VII of the Magistrates' Courts (Northern Ireland) Order 1981(**9**).

(8) If the court allows an appeal brought under paragraph (5) the authority concerned shall compensate the owner of the Iranian 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 arbitrator appointed, failing agreement between the parties, by the Department; and the provisions of the Arbitration Act 1996(**10**) shall apply accordingly.

(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.

(11) The costs of re-dispatch, storage and distribution of Iranian pistachios under this regulation shall be borne by the importer.".

(**9**) S.I. 1981/1675 (N.I. 26)
(**10**) 1996 c. 23