STATUTORY RULES OF NORTHERN IRELAND

2003 No. 353

FOOD

Food (Brazil Nuts) (Emergency Control) Regulations (Northern Ireland) 2003

Made - - - -	*25th July 2003*
Coming into operation	*28th July 2003*

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

Citation and commencement

1. These Regulations may be cited as the Food (Brazil Nuts) (Emergency Control) Regulations (Northern Ireland) 2003 and shall come into operation on 28th July 2003.

Interpretation

2.—(1) In these Regulations –

"Brazil nuts" means Brazil nuts in shell falling within CN code 0801 21 00 originating in or consigned from Brazil;

"the Commission Decision" means Commission Decision 2003/493/EC imposing special conditions on the import of Brazil nuts in shell originating in or consigned from Brazil(**3**);

"the Department" means the Department of Health, Social Services and Public Safety;

"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(**4**) as amended by Commission Decision 2002/27/EC(**5**);

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

(**1**) S.I.2000/2812
(**2**) 1972 c. 68
(**3**) O.J. No. L168, 5.7.2003, p. 33
(**4**) O.J. No. L201, 17.7.1998, p. 93
(**5**) O.J. No. L75, 16.3.2002, p. 44

"the Order" means the Food Safety (Northern Ireland) Order 1991(**6**) and, subject to paragraph (2), any expression used both in these Regulations and in the Order has the meaning it bears in the Order;

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

(3) The Interpretation Act (Northern Ireland) 1954(**7**) shall apply to these Regulations as it applies to an Act of the Northern Ireland Assembly.

Prohibition on import

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

(a) the conditions specified in Articles 1.1, 4.1 and 2 and 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 1st July 2003) is satisfied in relation to them.

(2) Subject to paragraph (3), no person shall import 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 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) These Regulations shall be enforced and executed by each district council within its district.

(2) For the purposes of the exercise of the duty referred to in paragraph (1) an authorised officer 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 by Article 33 of the Order for purposes connected with the Order or Regulations or orders made under the Order.

(3) 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 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).

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

(**6**) S.I. 1991/762 (N.I.7) as amended by S.I. 1996/1633 (N.I.12) and paragraphs 26 to 42 of Schedule 5 and Schedule 6 to the Food Standards Act 1999 c. 28

(**7**) 1954 c. 33 (N.I.)

Application of various provisions of the Food Safety (Northern Ireland) Order 1991 and sampling and analysis

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

(a) Article 19 (offences due to fault of another person);

(b) Article 34 (obstruction, etc., of officers); and

(c) Article 36(1) (punishment of offences), in so far as it relates to offences under Article 34(1) and (2) as applied by sub–paragraph (b).

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

(a) for paragraph (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(2)(b) of the Food (Brazil Nuts) (Emergency Control) Regulations (Northern Ireland) 2003";

(b) the power to take samples under paragraphs (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;

(c) paragraph (c) shall be omitted; and

(d) for "any of the provisions of this Order or of regulations or orders made under it" in paragraph (d) there shall be substituted "the Food (Brazil Nuts) (Emergency Control) Regulations (Northern Ireland) 2003".

(3) Where, pursuant to Article 29(b) of the Order as applied for the purposes of these Regulations by paragraph (2), an authorised officer has taken a sample of any Brazil nuts, 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(**8**);

(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(**9**), 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.

(**8**) O.J. No. L290, 24.11.93, p. 14
(**9**) O.J. No. L372, 31.12.85, p. 50