1993 No. 31

FOOD

Aflatoxins in Nuts, Nut Products, Dried Figs and Dried Fig Products Regulations (Northern Ireland) 1993

Made . . . . . *25th January 1993*

Coming into operation . . *5th March 1993*

The Department of Health and Social Services, in exercise of the powers conferred on it by Articles 15(1)(*a*), (*b*) and (*f*), 25(1) and (3), 26(3), 32(1) and (2)(*b*), (*c*) and (*f*) and 47(2) of the Food Safety (Northern Ireland) Order 1991(**a**) and of all other powers enabling it in that behalf and after consultation in accordance with Article 47(3) of the said Order with such organisations as appear to it to be representative of interests likely to be substantially affected by these Regulations, hereby makes the following Regulations:

Citation, commencement, interpretation and scope

1.—(1) These Regulations may be cited as the Aflatoxins in Nuts, Nut Products, Dried Figs and Dried Fig Products Regulations (Northern Ireland) 1993 and shall come into operation on 5th March 1993.

(2) In these Regulations—

"aflatoxins" means all or any of aflatoxin B_1, aflatoxin B_2, aflatoxin G_1 and aflatoxin G_2, as, in each case, more particularly specified by its full chemical name in Schedule 1;

"authorised officer" means an authorised officer of a district council;

"Council Regulation" means Council Regulation (EEC) No. 2658/87(**b**) as amended(**c**);

"designated place" means any place reasonably designated by an authorised officer for the purposes of inspection of food under these Regulations;

"dried figs" means the fruit which falls within category 0804 20 90 of the combined nomenclature subheadings of the Council Regulation;

"dried fig product" means any food at least half of which consists (by weight) of dried figs, except that for the purposes of regulations 5, 7(1)(*b*) and (*e*) and 8(2) and Schedule 4, it shall also include any food containing dried figs in a lesser amount;

(**a**) S.I. 1991/762 (N.I. 7). *See* Article 2(2) for the definitions of "regulations" and "the Department concerned"

(**b**) O.J. No. L256, 7.9.87, p. 1

(**c**) The relevant amendment is Council Regulation (EEC) No. 2505/92 (O.J. No. L267, 14.9.92, p. 1)

"importer" in relation to imported nuts, nut products, dried figs, dried fig products or any of them includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of the nuts, nut products, dried figs, dried fig products or any of them or is in any way entitled to the custody or control of them;

"nuts" means the nuts listed in column 1 of Schedule 2 the corresponding Council Regulation combined nomenclature subheadings for which appear in column 2 of Schedule 2;

"nut product" means any food at least half of which consists (by weight) of nuts or of any substance (save where that substance consists exclusively of edible oil) derived from nuts, and for the purposes of regulations 5, 7(1)(*b*) and (*e*) and 8(2) and Schedule 4, it shall also include—

(*a*) any food consisting of nuts or of any substance (including edible oil) derived from nuts in a lesser amount, and

(*b*) edible oils derived wholly or partly from nuts;

"officer of Customs and Excise" includes any person acting under the authority of the Commissioners of Customs and Excise;

"the Order" means the Food Safety (Northern Ireland) Order 1991;

"processing" shall not include any method of treatment which reduces the proportion of total aflatoxins in any consignment merely by blending or mixing that consignment with another which has a lower level of aflatoxins;

"sell" includes offer or expose for sale or have in possession for sale, and in relation to nuts, nut products, dried figs, dried fig products or any of them "consumer sale" means a sale of them—

(*a*) to the ultimate consumer, or

(*b*) in packaging in which they are ready for delivery to the ultimate consumer;

"total aflatoxins" means the sum of the concentrations of aflatoxins;

"ultimate consumer" has the meaning assigned to it by the Food Labelling Regulations (Northern Ireland) 1984(**a**).

(3) These Regulations do not apply to any nuts, nut products, dried figs, dried fig products or any of them which are not intended for sale for human consumption.

Certification of what constitutes a consignment

2.—(1) Subject to the provisions of paragraph (2), the importer into Northern Ireland from a country outside the European Economic Community of any nuts, nut products, dried figs or dried fig products which are the subject of these Regulations shall, in relation to them, give to an authorised officer a

(a) S.R. 1984 No. 407, to which there are amendments not relevant to these Regulations

certificate identifying the consignment that those nuts, nut products, dried figs or dried fig products constitute, and for the purposes of these Regulations "consignment" shall be taken to be such certificated amount of nuts, nut products, dried figs or dried fig products.

(2) In certifying what is to constitute a consignment for the purposes of these Regulations, an importer shall—

(*a*) limit each consignment—

(i) to an amount not exceeding 25,000 kilograms,

(ii) to only one of the categories—

(*aa*) nuts,

(*bb*) nut products,

(*cc*) dried figs,

(*dd*) dried fig products; and

(*b*) account for all of the nuts, nut products, dried figs or dried fig products that he is, at the time of certification, importing or intending to import.

Importation procedure

3.—(1) No person shall import any consignment of nuts, nut products, dried figs and dried fig products or any of them into Northern Ireland from a country outside the European Economic Community except—

(*a*) through an authorised place of entry designated under regulation 4; and

(*b*) in accordance with the procedure set out in either Part I or Part II of Schedule 3.

(2) No person shall sell any nut, nut product, dried fig or dried fig product from a consignment which has been imported in contravention of paragraph (1).

Authorised places of entry

4.—(1) The Department may by notice published in the Belfast Gazette designate a place of entry as an authorised place of entry for the purposes of these Regulations either—

(*a*) generally, or

(*b*) specifically, in relation to a class of nuts, nut products, dried figs and dried fig products or any of them specified in the notice.

(2) The Department may also, by authorisation in writing, designate a place of entry as an authorised place of entry for a particular consignment of nuts, nut products, dried figs, dried fig products or any of them specified in the authorisation.

Consumer sales

5. No person shall make a consumer sale of any nuts, nut products, dried figs, dried fig products or any of them which, when analysed using a method which complies with the performance parameters set out at paragraph 5 of Schedule 4, have a level of total aflatoxins of more than 4 micrograms per kilogram.

Duties of authorised officers

6.—(1) In carrying out any inspection under paragraph 2 or 3 of Part I of Schedule 3, an authorised officer shall take all reasonable steps—

(*a*) to ensure that the transport of the consignment and its placing on the market is not unduly delayed, and

(*b*) to avoid causing any delays that might adversely affect the quality of the nuts, nut products, dried figs and dried fig products, or any of them, in the consignment.

(2) Where notice is given to an importer under paragraph 3(2) of Part I of Schedule 3 requiring the destruction or disposal of a consignment, an authorised officer shall make an endorsement on any papers accompanying the consignment, so as to indicate clearly the requirement under the notice.

(3) An endorsement made under paragraph (2) may at any time be deleted or amended by an authorised officer and it shall be so deleted if the notice is rescinded by a magistrates' court order under paragraph 5(*b*) of Part I of Schedule 3 that the notice shall no longer have effect.

Offences and enforcement

7.—(1) Any person who—

(*a*) imports a consignment of nuts, nut products, dried figs and dried fig products or any of them in contravention of any requirement imposed by or under these Regulations or sells any nut, nut product, dried fig or dried fig product from a consignment that has been so imported,

(*b*) makes a consumer sale of any nuts, nut products, dried figs, dried fig products or any of them in contravention of any requirement imposed by or under these Regulations,

(*c*) in dealing with a consignment of nuts, nut products, dried figs and dried fig products or any of them, does not do so in accordance with a requirement imposed by or under these Regulations in relation to such dealing,

(*d*) uses a document which he knows to be false in a material particular or recklessly makes a statement or uses a document which is false in a material particular in connection with the importation of a consignment of nuts, nut products, dried figs, dried fig products or any of them, or

(*e*) uses a document which he knows to be false in a material particular or recklessly makes a statement or uses a document which is false in a material particular in connection with the consumer sale of nuts, nut products, dried figs, dried fig products or any of them,

shall be guilty of an offence and liable—

(i) on summary conviction, to a fine not exceeding £2,000; or

(ii) on conviction on indictment, to a fine.

(2) Each district council shall enforce and execute the provisions of these Regulations within its district.

Defences

8.—(1) In any proceedings for an offence against these Regulations it shall be a defence for the person charged to prove that the food, in respect of which the offence is alleged to have been committed—

(*a*) was intended for export and complied with the importing country's domestic food legislation relevant to the alleged offence; or

(*b*) was intended for export and was prepared and labelled for sale before 5th March 1993.

(2) In any proceedings for an offence against these Regulations consisting of the consumer sale of nuts, nut products, dried figs or dried fig products or any of them containing a level of total aflatoxins of more than 4 micrograms per kilogram of the food, it shall be a defence to show that the nuts or dried figs, or in the case of nut products or dried fig products the nut or dried fig element of such products, in relation to which the offence is alleged to have been committed comes from a lot or batch of nuts or dried figs that has previously been certified by an analytical laboratory (further to sampling and analysis carried out in accordance with Schedule 4) as containing a level of total aflatoxins of no more than 4 micrograms per kilogram of, as the case may be, nuts or dried figs.

(3) For the purposes of paragraph (2), ''analytical laboratory'' means any laboratory which—

(*a*) was, at the time of giving the certificate in question, a participant in a proficiency testing scheme which conformed to the International Harmonised Protocol for the Proficiency Testing of (Chemical) Analytical Laboratories prepared, jointly, by the International Union of Pure and Applied Chemistry, the International Standards Organisation and the AOAC International, and

(*b*) in the round of testing conforming to that Protocol which took place closest to the date of performing the analysis on the basis of which the certificate in question was given, achieved Z scores (as defined in that Protocol) of between −3 and +3 (inclusive).

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

9.—(1) The following provisions of the Order shall apply for the purposes of these Regulations as they apply for the purposes of Articles 7, 13 or 14 of the Order and, unless the context otherwise requires, any reference in them to the Order shall be construed for the purposes of these Regulations as a reference to these Regulations—

(*a*) Articles 2(4) and 3 (extended meaning of ''sale'' etc.);

(*b*) Article 4 (presumptions that food intended for human consumption);

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

(*d*) Article 20 (defence of due diligence);

(*e*) Article 30(8) (which relates to documentary evidence); and

(*f*) Article 34 (obstruction etc. of officers).