

2002 No. 2350

FOOD, ENGLAND

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

Made - - - - - *11th September 2002*

Laid before Parliament *11th September 2002*

Coming into force - - *13th September 2002*

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on him by that section, makes the following Regulations:

Title, commencement and extent

1.—(1) These Regulations may be cited as the Food (Peanuts from China) (Emergency Control) (England) (No.2) Regulations 2002 and shall come into force on 13th September 2002.

(2) These Regulations extend to England only.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Food Safety Act 1990(c) 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;

“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(d) as amended by Commission Decision 2002/233/EC(e) and Commission Decision 2002/678/EC(f) ;

“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 1 kg) 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;

(a) S.I. 1972/1811.

(b) 1972 c. 68.

(c) 1990 c.16.

(d) OJ No. L34, 5.2.2002, p. 21.

(e) OJ No. L78, 21.3.2002, p. 14.

(f) OJ No. L229, 27.8.2002, p. 33.

“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^(a) as amended by Commission Decision 2002/27/EC^(b);

“food authority” includes neither the appropriate Treasurer referred to in section 5(1)(c) of the Act (which deals with the Inner Temple and Middle Temple) nor 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—

- (a) in relation to the London port health district (within the meaning given to that phrase for the purposes of the Public Health (Control of Disease) Act 1984^(c)) by section 7(1) of that Act), the Common Council of the City of London; and
- (b) in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984, 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.

Prohibition on import

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

- (a) the conditions specified in Article 1.1 and 1.3 of the Commission Decision are satisfied in relation to those peanuts; or
- (b) the derogation contained in Article 1a of the Commission Decision (which is concerned with consignments which left China prior to 11th March 2002) is satisfied in relation to them.

(2) Subject to paragraph (3), no person shall import into England any controlled Chinese peanuts, 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 England 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.

(a) OJ No. L201, 17.7.1998, p. 93.

(b) OJ No. L75, 16.3.2002, p. 44.

(c) 1984 c. 22.

- (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 Secretary of State 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);
- (g) and 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) (England) (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 1 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) (England) (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(a);
- (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

(a) OJ No. L290, 24.11.93, p. 14.

Directive 85/591/EEC concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption^(a), 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.

Re-dispatch or destruction of illegal imports

6.—(1) If on an inspection or examination of any Chinese peanuts it appears to an authorised officer of a port health authority or as the case may be food authority that they have been imported in contravention of regulation 3(1) or (2) he may after appropriate consultation with a person appearing him to be the importer serve on that person a notice ordering—

(a) the re-dispatch of the Chinese peanuts outside the European Community within such reasonable period as shall be specified in the notice; or

(b) (where such re-dispatch would in his opinion involve serious risks to human health) the destruction of the Chinese peanuts within such reasonable period as shall be so specified.

(2) In any case where such an appeal as is mentioned in paragraph (3) may be brought the notice served under paragraph (1) shall state—

(a) the right of appeal to a magistrates' court; and

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

(3) Any person who is aggrieved by a decision of an authorised officer to serve a notice under paragraph (1) may appeal to a magistrates' court, which shall determine whether or not the notice was lawfully served.

(4) The period within which such an appeal as is mentioned in paragraph (3) may be brought shall be 6 days from the date on which the notice was served exclusive of Saturdays, Sundays and Public Holidays and the making of the complaint shall be deemed for the purpose of this paragraph to be the bringing of the appeal.

(5) The procedure on an appeal to a magistrates' court under paragraph (3) shall be by way of complaint for an order, and the Magistrates' Courts Act 1980^(b) shall apply to the proceedings.

(a) OJ No. L372, 31.12.85, p. 50.

(b) 1980 c. 43.

(6) If the court allows an appeal brought under paragraph (3) the authority concerned shall compensate the owner of the Chinese peanuts concerned for any depreciation in their value resulting from the action taken by the authorised officer.

(7) Any disputed question as to the right to or the amount of any compensation payable under paragraph (6) shall be determined by arbitration.

(8) Any person who breaches the terms of a notice served under paragraph (1) 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.

Revocation of the Food (Peanuts from China) (Emergency Control) (England) Regulations 2002

7. The Food (Peanuts from China) (Emergency Control) (England) Regulations 2002(a) are revoked.

Signed by authority of the Secretary of State for Health

11th September 2002

David Cammy
Parliamentary Under-Secretary of State,
Department of Health

(a) S.I. 2002/774.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, which extend to England only, revoke and re-enact with changes the Food (Peanuts from China) (Emergency Control) (England) Regulations 2002. The revocation is effected by regulation 7.

The Regulations implement 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 (OJ No. L34, 5.2.2002, p.21) as amended by Commission Decision 2002/233/EC (OJ No. L78, 21.3.2002, p.14) and Commission Decision 2002/678/EC (OJ No. L229, 27.8.2002, p.33). The categories of products which are subject to those conditions are specified in Article 1.1 of Commission Decision 2002/79/EC as so amended.

The Regulations—

- (a) prohibit the importation of “Chinese peanuts” (defined in regulation 2(1)), except where—
 - (i) they are accompanied by a Chinese Government health certificate and the results of official sampling and analysis, the importation takes place only through a specified point of entry and the consignment and each of its constituent bags or other containers are identified with a code corresponding with that specified on the health certificate and on the accompanying report containing the sampling and analysis results; or
 - (ii) (even though they are not accompanied by a Chinese Government health certificate or the results of official sampling and analysis) they left China before 11th March 2002, the operator shows, by means of sampling and analysis in the prescribed manner, that the levels of aflatoxin B1 and total aflatoxin in the products do not exceed the maximum permitted levels and the importation takes place only through a specified point of entry (*regulation 3*);
- (b) provide for their enforcement (*regulation 4*);
- (c) apply with modifications certain provisions of the Food Safety Act 1990 for the purposes of the Regulations and provide for sampling and analysis (*regulation 5*); and
- (d) provide for the redispach or destruction of illegal imports of controlled Chinese peanuts (*regulation 6*).

The principal changes effected by these Regulations are that—

- (a) the previous requirement that each consignment of controlled Chinese peanuts be identified by a code is additionally applied (in the case of consignments leaving China after 1st September 2002) to each bag (or other type of packaging used) making up the consignment concerned;
- (b) the previous requirement that each consignment of controlled Chinese peanuts be subjected to sampling and analysis in order to ensure compliance with Commission Decision 2002/79/EC is modified by providing that—
 - (i) only approximately 10% of such consignments, selected at random, should be so subjected,
 - (ii) consignments so subjected must be detained for that purpose,
 - (iii) the period of detention must not exceed 10 working days, and
 - (iv) an authorised officer of the relevant enforcement authority must issue a notice in writing stating that sampling has taken place and the results of the analysis of the sample; and
- (c) an authorised officer of the relevant enforcement authority is empowered (subject to a right of appeal to a magistrates’ court) to issue a notice ordering the re-dispatch of illegal imports of controlled Chinese peanuts.

No regulatory impact assessment has been prepared in relation to these Regulations.

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

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