

**EXPLANATORY MEMORANDUM TO THE
FOOD (PISTACHIOS FROM IRAN) (EMERGENCY CONTROL) (ENGLAND)
(AMENDMENT) REGULATIONS 2005**

2005 No. 208

1. This explanatory memorandum has been prepared by the Food Standards Agency and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 These Regulations further amend the Food (Pistachios from Iran) (Emergency Control) (England) Regulations 2003 (S.I. 2003/1956, as amended by S.I. 2004/1265). Those Regulations implemented Commission Decision 97/830/EC repealing Commission Decision 97/613/EC and imposing special conditions on the import of pistachios and certain products derived from pistachios originating in, or consigned from Iran as last amended by Commission Decision 2004/429/EC. The amendments made by these Regulations implement the Commission Decision of 26 January 2005 imposing special conditions on the import of pistachios and certain products derived from pistachios originating in, or consigned from Iran, “the new Decision”. The new Decision repealed Commission Decision 97/830/EC.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The Regulations were made on ? February 2005, laid on ? February 2005 and come into force on ? February 2005. They therefore breach the 21-day rule. The Commission Decision applies from 1 February 2005 (Article 5) and so the S.I. must be brought into force by that date.

4. **Legislative Background**

- 4.1 The instrument is made and laid under Section 2(2) of The European Communities Act 1972.
- 4.2 These Regulations implement Commission Decision 2005/85/EC of 26 January 2005 imposing special conditions on the import of pistachios and certain products derived from pistachios originating in, or consigned from Iran in England. The Commission Decision places a time limit of four months on the validity of the aflatoxin health certificate in order to limit the duration of storage and transportation, when aflatoxins could be formed. The measures provided for in the Decision could have a significant impact on the resources of enforcement

authorities in Member States. The Decision therefore requires that all costs resulting from sampling, analysis, storage and all costs resulting from official measures taken as regards non-compliant consignments are to be borne by the importers or food business operators concerned. The Decision also carries forward the other obligations imposed by the current Commission Decisions, which it revokes.

- 4.3 In England, these Regulations will amend existing legislation, namely the Food (Pistachios from Iran) (Emergency Control) (England) Regulations 2003 (S.I. 2003 No. 1956), as amended, which impose special conditions on the import of these products into the EU.

5. Extent

- 5.1 This instrument applies to England.
- 5.2 There will be parallel legislation in Scotland, Wales, and Northern Ireland.

6. European Convention on Human Rights

- 6.1 The Minister, Melanie Johnson, has made the following statement regarding Human Rights:

In my view the provisions of the Food (Pistachios from Iran) (Emergency Control) (England) (Amendment) Regulations 2004 are compatible with the Convention rights.

7. Policy background

- 7.1 The Commission Decision is a consumer protection measure that extends the special conditions imposed on the import into the EU of pistachios and certain pistachio products from Iran that may be contaminated with aflatoxins.
- 7.2 Aflatoxins are toxins formed by the growth of certain moulds on food commodities grown in warm, humid conditions in the tropics and sub-tropics. They occur mainly in commodities imported from third countries, in particular peanuts, edible nuts and dried figs and products thereof. There are a number of different types of aflatoxin, with aflatoxin B₁ being the most toxic. It is a potent carcinogen in laboratory animals and there is evidence that it is a genotoxic human carcinogen i.e. it can cause cancer by reacting with genetic material. National and international bodies have recommended that aflatoxin concentrations in food should be reduced to the lowest levels technologically achievable.
- 7.3 The new S.I. accurately transposes the Commission Decision. A full consultation on the new regulations has not been carried out because the UK must implement as soon as possible after notification if it is to meet its EU obligations.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument since it is effectively an emergency public health measure. The requirement to test every consignment of pistachios and certain pistachio products from Iran is unchanged. However, such consignments are currently mainly imported through other EU Member States and very few consignments come directly into the UK. The costs arising from the testing (sampling, analysis and storage) of consignments and costs arising from measures taken with regard to non-compliant consignments are now to be borne by the importer or food business operator concerned. Enforcement authorities have indicated that such costs per consignment will be approximately £600. If a consignment contains very high levels of aflatoxins an enforcement authority can request that the consignment be destroyed. In such cases there would be additional costs for the importer or food business to cover the enforcement authority's costs for supervision of destruction and in instances where an appeal is made and legal costs would be incurred for legal representation, case preparation, and other court costs.

8.2 The impact on the public sector is zero.

9. Contact

9.1 Bryan Jones at the Food Standards Agency Tel: 020 7276 8720 or e-mail: bryan.jones@foodstandards.gsi.gov.uk can answer any queries regarding the instrument.