



**CYNULLIAD CENEDLAETHOL CYMRU**

**NATIONAL ASSEMBLY FOR WALES**

**OFFERYNNAU STATUDOL**

**STATUTORY INSTRUMENTS**

**2003 Rhif 2254 (Cy.224)**

**2003 No. 2254 (W.224)**

**BWYD, CYMRU**

**FOOD, WALES**

**Rheoliadau Bwyd (Cnau Brasil)  
(Rheolaeth Frys) (Cymru)  
2003**

**The Food (Brazil Nuts)  
(Emergency Control) (Wales)  
Regulations 2003**

**NODYN ESBONIADOL**

**EXPLANATORY NOTE**

*(Nid yw'r nodyn hwn yn rhan o'r Rheoliadau)*

*(This note is not part of the Regulations)*

Mae'r Rheoliadau hyn, sy'n gymwys mewn perthynas â Chymru yn unig, yn gweithredu Penderfyniad y Comisiwn 2003/493/EC sy'n gosod amodau arbennig ar fewnforio cnau Brasil yn eu plisg ac sy'n deillio o Frasil neu'n cael eu traddodi oddi yno (OJ Rhif L168, 5.7.2003, t. 33).

These Regulations, which apply in relation to Wales only, implement Commission Decision 2003/493/EC imposing special conditions on the import of Brazil nuts in shell originating in or consigned from Brazil (OJ No. L168, 5.7.2003, p.33).

Mae'r Rheoliadau hyn -

These Regulations -

- (a) yn gwahardd (yn ddarostyngedig i'r rhanddirymiad a ddisgrifir isod) mewnforio "cnau Brasil" (a ddiffinnir yn rheoliad 2(1)), ac eithrio -
  - (i) pan fydd tystysgrif iechyd Llywodraeth Brasil ac adroddiad sy'n cynnwys canlyniadau samplu a dadansoddi swyddogol yn mynd gyda hwy, bod y mewnforio yn digwydd drwy bwynt mynediad penodedig yn unig a bod pob llwyth yn cael ei nodi â chod sy'n cyfateb i'r hyn a bennir ar y dystysgrif iechyd a'r adroddiad sy'n cynnwys canlyniadau'r samplu a'r dadansoddi;
  - (ii) pan fyddant yn ddarostyngedig i wiriadau dogfennol penodedig; a
  - (iii) pan fydd pob llwyth yn cael ei ddadansoddi ar gyfer aflatocsin B1 a'r cyfanswm o lefelau aflatocsin cyn eu rhyddhau i'r farchnad (rheoliad 3);
- (b) yn darparu ar gyfer eu gorfodi (rheoliad 4);
- (c) yn cymhwyso gydag addasiadau ddarpariaethau penodol o Ddeddf Diogelwch

- (a) prohibit (subject to the derogation described below) the importation of "Brazil nuts" (defined in regulation 2(1)), except where -
  - (i) they are accompanied by a Brazilian Government health certificate and a report containing the results of official sampling and analysis, the importation takes place only through a specified point of entry and each consignment is identified with a code corresponding with that specified on the health certificate and the accompanying report containing the sampling and analysis results;
  - (ii) they are subject to specified documentary checks; and
  - (iii) each consignment is subjected to analysis for aflatoxin B1 and total aflatoxin levels before release onto the market (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

Bwyd 1990 at ddibenion y Rheoliadau a darparu ar gyfer samplu a dadansoddi (rheoliad 5); a

- (ch) yn darparu ar gyfer ailanfôn mewnforion anghyfreithlon o gnau Brasil i'r wlad y maent yn tarddu ohoni neu eu distrywio (rheoliad 6).

Y rhanddirymiad yw bod caniatâd i fewnforio cnau Brasil hyd yn oed os nad yw tystysgrif iechyd Llywodraeth Brasil ac adroddiad sy'n cynnwys canlyniadau samplu a dadansoddi swyddogol yn dod gyda hwy os -

- (a) ymadawsant â Brasil ar neu cyn 5 Gorffennaf 2003;
- (b) gall y gweithredydd ddangos drwy gyfrwng samplu a dadansoddi yn y dull rhagnodedig nad yw'r lefelau aflatoxin B1 a'r cyfanswm o aflatoxin yn y cynhyrchion yn uwch nag uchafbwynt y lefelau a ganiateir; ac
- (c) digwydd y mewnforio drwy bwynt mynediad penodedig (rheoliad 3).

Rhif cod yw'r cod CN y cyfeirir ato yn y diffiniad o "cnau Brasil" a hwnnw'n god y gyfundrefn enwi cyfun a sefydlwyd gan Reoliad y Cyngor 2658/87 ar y tariff a'r gyfundrefn enwi ystadegol ac ar dariff y tollau (OJ Rhif L256, 7.9.87, t. 1).

Nid oes arfarniad rheoliadol wedi'i baratoi mewn perthynas â'r Rheoliadau hyn.

the Regulations and provide for sampling and analysis (regulation 5); and

- (d) provide for the re-dispatch to the country of origin or destruction of illegal imports of Brazil nuts (regulation 6).

The derogation is that Brazil nuts may be imported even though they are not accompanied by a Brazilian Government health certificate and a report containing the results of official sampling and analysis if -

- (a) they left Brazil on or before 5th July 2003;
- (b) the operator can show 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
- (c) the importation takes place through a specified point of entry (regulation 3).

The CN code referred to in the definition of "Brazil nuts" is a code number of the combined nomenclature established by Council Regulation 2658/87 on the tariff and statistical nomenclature and on the customs tariff (OJ No. L256, 7.9.87, p.1).

No regulatory appraisal has been prepared in relation to these Regulations.

**2003 Rhif 2254 (Cy.224)****2003 No. 2254 (W.224)****BWYD, CYMRU****FOOD, WALES****Rheoliadau Bwyd (Cnau Brasil)  
(Rheolaeth Frys) (Cymru)  
2003****The Food (Brazil Nuts)  
(Emergency Control) (Wales)  
Regulations 2003***Wedi'u gwneud*

2 Medi 2003

*Made*

2nd September 2003

*Yn dod i rym*

5 Medi 2003

*Coming into force*

5th September 2003

Mae Cynulliad Cenedlaethol Cymru, gan ei fod wedi'i ddynodi(a) at ddibenion adran 2(2) o Ddeddf y Cymunedau Ewropeaidd 1972(b) mewn perthynas â pholisi amaethyddol cyffredin y Gymuned Ewropeaidd, gan weithredu i arfer y pwerau a roddwyd iddo gan yr adran honno, yn gwneud y Rheoliadau canlynol:

The National Assembly for Wales, being designated(a) for the purposes of section 2(2) of the European Communities Act 1972(a) in relation to the common agricultural policy of the European Community, in exercise of the powers conferred on it by that section, makes the following Regulations:

**Enwi, cychwyn a chymhwysu**

1.-(1) Enw'r Rheoliadau hyn yw Rheoliadau Bwyd (Cnau Brasil) (Rheolaeth Frys) (Cymru) 2003, deuant i rym ar 5 Medi 2003.

(2) Mae'r Rheoliadau hyn yn gymwys i Gymru yn unig.

**Title, commencement and application**

1.-(1) These Regulations may be cited as the Food (Brazil Nuts) (Emergency Control) (Wales) Regulations 2003 and shall come into force on 5th September 2003.

(2) These Regulations apply in relation to Wales only.

**Dehongli**

2.-(1) Yn y Rheoliadau hyn -

mae i "awdurdod bwyd" yr un ystyr â "*food authority*" yn adran 5(1A) a (3)(a) a (b) o'r Ddeddf;

ystyr "awdurdod iechyd porthladd" ("*port health authority*") mewn perthynas ag unrhyw ardal iechyd porthladd a sefydlwyd drwy orchymyn o dan adran 2(3) o Ddeddf Iechyd y Cyhoedd (Rheoli Clefydau) 1984(c), awdurdod iechyd porthladd ar gyfer yr ardal honno a sefydlwyd gan orchymyn o dan adran 2(4) o'r Ddeddf;

ystyr "cnau Brasil" ("*Brazil nuts*") yw cnau Brasil yn eu plisg ac sy'n dod o fewn Cod CN

**Interpretation**

2.-(1) In these Regulations -

"the Act" ("*y Ddeddf*") 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;

"Brazil nuts" ("*cnau Brasil*") means Brazil nuts in shell falling within CN code 0801 21 00 originating in or consigned from Brazil(d);

"the Commission Decision" ("*Penderfyniad y Comisiwn*") means Commission Decision 2003/493/EC imposing special conditions on the import of Brazil nuts in shell originating in

(a) O.S. 1999/2788.

(b) 1972 p. 68.

(c) 1984 p.22.

(a) S.I. 1999/2788.

(b) 1972 c. 68.

(c) 1990 c. 16.

(d) CN Code is the code number of the "combined nomenclature" established by Council Regulation 2658/87 on the tariff and statistical nomenclature and on the customs tariff (OJ No. L256, 7.9.87, p.1).

0801 21 00 sy'n tarddu o Frasil neu sy'n cael eu traddodi oddi yno(a);

ystyr "Cyfarwyddeb 98/53/EC" ("*Directive 98/53/EC*") yw Cyfarwyddeb y Comisiwn 98/53/EC sy'n gosod y dulliau samplu a dadansoddi ar gyfer rheolaeth swyddogol ar lefelau halogion penodol mewn bwydydd(b) fel y'i diwygiwyd gan Benderfyniad y Comisiwn 2002/27/EC(c);

mae i "cylchrediad rhydd" yr un ystyr â "*free circulation*" yn Erthygl 23.2, fel y'i darllenir ynghyd ag Erthygl 24, o'r Cytuniad a sefydlodd y Gymuned Ewropeaidd;

ystyr "y Ddeddf" ("*the Act*") yw Deddf Diogelwch Bwyd 1990(ch) ac, onid yw'r cyddestun yn mynnu fel arall ac yn ddarostyngedig i baragraff (2), mae i unrhyw ymadrodd a ddefnyddir yn y Rheoliadau hyn ac yn y Ddeddf yr ystyr sydd iddo yn y Ddeddf; ac

ystyr "Penderfyniad y Comisiwn" ("*the Commission Decision*") yw Penderfyniad y Comisiwn 2003/493/EC sy'n gosod amodau arbennig ar fewnforio cnau Brasil yn eu plisg ac sy'n tarddu o Frasil neu yn cael eu traddodi oddi yno(d);

(2) Mae i unrhyw derm a ddefnyddir yn y diffiniad o "cnau Brasil" ym mharagraff (1) yr un ystyr â'r termau cyfatebol ym Mhenderfyniad y Comisiwn.

### Gwaharddiad ar fewnforio

3.-(1) Yn ddarostyngedig i baragraff (3), ni chaiff unrhyw berson fewnforio unrhyw gnau Brasil i Gymru oni bai-

- (a) i'r amodau a bennir yn Erthyglau 1.1, 4.1, 4.2 ac Erthygl 5 o Benderfyniad y Comisiwn gael eu bodloni mewn perthynas â'r cnau Brasil hynny; neu
- (b) i'r rhanddirymiad a gynhwysir yn Erthygl 1.2 o Benderfyniad y Comisiwn (sy'n ymwneud â llwythi a ymadawodd â Brasil cyn 5 Gorffennaf 2003) gael ei fodloni mewn perthynas â hwy.

(2) Yn ddarostyngedig i baragraff (3), ni chaiff neb fewnforio unrhyw gnau Brasil i Gymru, ac eithrio drwy bwynt mynediad a restrir yn Atodlen II i Benderfyniad y Comisiwn.

or consigned from Brazil(a);

"Directive 98/53/EC" ("*Cyfarwyddeb 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(b) as amended by Commission Decision 2002/27/EC(c);

"food authority" ("*awdurdod bwyd*") has the same meaning as in section 5(1A) and (3)(a) and (b) of the Act;

"free circulation" ("*cylchrediad rhydd*") 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" ("*awdurdod iechyd porthladd*") means in relation to any port health district constituted by order under section 2(3) of the Public Health (Control of Disease) Act 1984(d), 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 "Brazil nuts" 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 Wales any Brazil nuts unless -

- (a) the conditions specified in Articles 1.1, 4.1, 4.2 and Article 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 5th July 2003) is satisfied in relation to them.

(2) Subject to paragraph (3), no person shall import into Wales any Brazil nuts, except through a point of entry listed in Annex II to the Commission Decision.

(a) Cod CN yw rhif cod y "gyfundrefn enwi gyfun" a sefydlwyd gan Reoliad y Cyngor 1658/87 ar y tariff a chyfundrefn enwi ystadegol ar dariff y tollau (Rhif OJ L256, 7.9.87, t. 1).

(b) OJ Rhif L201, 17.7.1998, t.93.

(c) OJ Rhif L75, 16.3.2002, t.44.

(ch) 1990 p. 16.

(d) OJ Rhif L168, 5.7.2003, t.33.

(a) OJ No. L168, 5.7.2003, p.33.

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

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

(d) 1984 c.22.

(3) Rhaid peidio â deall na pharagraff (1) na pharagraff (2) fel petaent yn gwahardd mewnfario i Gymru unrhyw gnau Brasil ac sydd mewn cylchrediad mewn aelod-Wladwriaeth o'r aelod-Wladwriaeth honno.

(4) Euog o dramgwydd yw unrhyw berson sy'n mynd yn groes i baragraff (1) neu (2), gan wybod hynny, ac mae'n agored ar gollfarn ddiannod i ddirwy nad yw'n uwch na lefel 5 ar y raddfa safonol neu i garchar am dymor nad yw'n hwy na thri mis.

### **Gorfodi**

4.-(1) Yn ddarostyngedig i baragraff (2), dyletswydd pob awdurdod iechyd porthladd yw gweithredu a gorfodi'r Rheoliadau hyn o fewn ei ardal.

(2) Mewn perthynas ag unrhyw le nad yw o fewn ardal awdurdod iechyd porthladd, rhaid i'r awdurdod bwyd ar gyfer yr ardal lle mae'r lle hwnnw weithredu a gorfodi'r Rheoliadau hyn.

(3) At ddibenion arfer y dyletswydd y cyfeirir ato ym mharagraff (1) neu, yn ôl y digwydd, (2), rhaid i swyddog awdurdodedig yr awdurdod dan sylw-

- (a) sicrhau y glynir wrth y gofynion y cyfeirir atynt ym mharagraff (4); ac
- (b) bod â'r un pwerau mynediad ag a roddir i swyddog awdurdodedig awdurdod gorfodi gan adran 32 o'r Ddeddf at ddibenion cysylltiedig â'r Ddeddf neu Reoliadau neu Orchmynion o dan y Ddeddf.

(4) Y gofynion yw'r gofynion a bennir yn -

- (a) Erthyglau 1.1 a 4.1 o Benderfyniad y Comisiwn (sy'n ymwneud â gwirio'r dogfennau perthnasol i lwythi o gnau Brasil);
- (b) Erthygl 4.2 a 4.4 o'r Penderfyniad hwnnw (sy'n ymwneud â samplu a dadansoddi'r llwythi hynny); ac
- (c) Erthygl 5 o'r Penderfyniad hwnnw (sy'n ymwneud ag achosion o hollti llwythi).

(5) Rhaid i bob awdurdod iechyd porthladd ac awdurdod bwyd roi unrhyw gymorth a gwybodaeth i Gynulliad Cenedlaethol Cymru a'r Asiantaeth Safonau Bwyd y maent yn gofyn yn rhesymol amdano neu amdani mewn cysylltiad â gweithredu a gorfodi'r Rheoliadau hyn.

### **Cymhwyso amrywiol ddarpariaethau Deddf Diogelwch Bwyd 1990 a samplu a dadansoddi**

5.-(1) Bydd darpariaethau canlynol y Ddeddf yn gymwys at ddibenion y Rheoliadau hyn gyda'r addasiad bod rhaid dehongli unrhyw gyfeiriad yn y darpariaethau hynny at y Ddeddf neu Ran ohoni fel cyfeiriad at y Rheoliadau hyn -

- (a) adran 20 (tramgwyddau sy'n codi oherwydd

(3) Neither paragraph (1) nor paragraph (2) shall be taken to prohibit the import into Wales 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) 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.

(4) 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 4.4 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).

(5) Each port health authority and food authority shall give such assistance and information to the National Assembly for Wales 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

bai person arall);

- (b) adran 33(1) (rhwyströ etc. swyddogion);
- (c) adran 33(2), gyda'r addasiad y bernir bod y cyfeiriad at "any such requirement as is mentioned in subsection (1)(b) above" yn gyfeiriad at unrhyw ofyniad a grybwyllir yn adran 33(1)(b) fel y'i cymhwysir gan is-baragraff (b);
- (ch) adran 35(1) (cosbi tramgwyddau), i'r graddau mae'n perthyn i dramgwyddau o dan adran 33(1) fel y'i cymhwysir gan is-baragraff (b);
- (d) adran 35(2) a (3), i'r graddau y mae'n perthyn i dramgwyddau o dan adran 33(2) fel y'i cymhwysir gan is-baragraff (c);
- (dd) adran 36 (tramgwyddau gan gyrrff corfforaethol); ac
- (e) adran 44 (amddiffyn swyddogion sy'n gweithredu'n ddiwyll).

(2) Mae adran 29 o'r Ddeddf (caffael samplau) yn gymwys at ddibenion y Rheoliadau hyn gyda'r addasiadau canlynol -

- (a) bod y geiriau "a food authority or as the case may be a port health authority" yn cael eu rhoi yn lle "an enforcement authority";
- (b) yn lle is-baragraff (b)(ii) rhoddir y ddarpariaeth ganlynol -
  - "(ii) is found by him at any premises which he is authorised to enter by virtue of regulation 4(3)(b) of the Food (Brazil Nuts) (Emergency Control) (Wales) Regulations 2003";
- (c) bod y pŵer i gymryd samplau o dan is-adrannau (b) a (d) yn cael ei gyfyngu i gymryd samplau yn unol â'r dulliau cymryd samplau a ddisgrifir yn Atodiad I i Gyfarwyddeb 98/53/EC neu yn unol â'r dulliau y cyfeirir atynt ynddo;
- (ch) bod is-adran (c) yn cael ei hepgor; ac
- (d) bod y geiriau "the Food (Brazil Nuts) (Emergency Control) (Wales) Regulations 2003" yn cael eu rhoi yn lle'r geiriau "any of the provisions of this Act or of regulations or orders made under it" yn is-adran (d);

(3) Pan fydd swyddog awdurdodedig wedi cymryd sampl o unrhyw gnau Brasil yn unol ag adran 29(b) o'r Ddeddf fel y'i cymhwysir at ddibenion y Rheoliadau hyn gan baragraff (2), rhaid iddo sicrhau-

- (a) bod y sampl yn cael ei pharatoi yn unol â-
  - (i) paragraffau 1.1, 2 a 3 o Atodiad II i Gyfarwyddeb 98/53/EC, a
  - (ii) yn achos cnau cyfain, yn unol â pharagraff 1.2 o'r Atodiad hwnnw;
- (b) bod dadansoddiad o'r sampl yn cael ei wneud mewn labordy sy'n cydymffurfio â Chyfarwyddeb y Cyngor 93/99/EEC ar bwnc

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); and
- (g) 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 (Brazil Nuts) (Emergency Control) (Wales) Regulations 2003";
- (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 I 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 (Brazil Nuts) (Emergency Control) (Wales) Regulations 2003".

(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 Brazil nuts, that officer 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

mesurau ychwanegol ynghylch rheolaeth swyddogol ar fwydydd(a);

(c) bod dadansoddiad yn cael ei wneud cyn gynted ag sy'n bosibl gan ddadansoddwr sydd wedi'i gymhwysu'n briodol yn unol â dulliau dadansoddi sydd-

(i) cyn belled ag y bo'n ymarferol, yn cydymffurfio â pharagraffau 1 a 2 o'r Atodiad i Gyfarwyddeb y Cyngor 85/591/EEC sy'n ymwneud â chyflwyno dulliau'r Gymuned o samplu a dadansoddi ar gyfer monitro bwydydd a fwriedir ar gyfer eu bwyta gan bobl(b), a

(ii) yn bodloni'r meini prawf a bennir ym mharagraff 4.3 o Atodiad II i Gyfarwyddeb 98/53/EC fel y'i darllenir ynghyd â'r nodiadau sydd iddo; a

(ch) bod adrodd ar ganlyniad y dadansoddi hwnnw -

(i) yn defnyddio'r diffiniadau ym mharagraff 4.1 o Atodiad II o Gyfarwyddeb 98/53/EC, a

(ii) yn unol â pharagraff 4.4 o'r Atodiad hwnnw.

(4) Cyn i ddadansoddwr gytuno i ddadansoddi sampl yn unol â pharagraff (3)(c) caiff fynnu cael ei dalu ymlaen llaw unrhyw ffi resymol y mae'n gofyn amdano.

(5) Rhaid i ddadansoddwr sydd wedi dadansoddi sampl yn unol â pharagraff (3)(c) roi i'r person a'i rhoddodd iddo dystysgrif a fydd yn pennu canlyniad y dadansoddi ac a fydd wedi'i llofnodi gan y dadansoddwr.

(6) Mewn unrhyw achos o dan y Rheoliadau hyn, o gael eu cyflwyno gan y naill barti neu'r llall, bydd y canlynol -

(a) dogfen sy'n honni bod yn dystysgrif a roddwyd gan ddadansoddwr o dan baragraff (5); neu

(b) dogfen a roddwyd iddo gan y parti arall fel copi o'r dystysgrif honno,

yn dystiolaeth ddigonol o'r ffeithiau sy'n cael eu datgan ynddi oni bai, mewn achos sy'n dod o fewn is-baragraff (a), i'r parti arall ofyn i'r dadansoddwr gael ei alw fel tyst.

(7) Pan fydd sampl a gafwyd o dan adran 29 o'r Ddeddf fel y'i cymhwyswyd at ddibenion y Rheoliadau hyn gan baragraff (2) wedi'i ddadansoddi yn unol â pharagraff 3(b) ac (c), bydd gan y perchennog hawl ar gais i gael copi o'r dystysgrif ddadansoddi drwy ei awdurdod sydd, yn rhinwedd rheoliad 4(1) neu (2), a dyletswydd arno i'w gorfodi.

(8) Nid yw dim ym mharagraff (3)(c) i'w gymryd fel petai'n atal i rywun sy'n gweithio o dan gyfarwyddyd

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 Directive 85/591/EEC concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption(b), 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 or she may demand the payment in advance of such reasonable fee as he or she 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 or her 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

(a) OJ Rhif L290, 24.11.93, t.14.

(b) OJ Rhif L372, 31.12.85, t.50.

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

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

dadansoddw'r rhag gwneud dadansoddiad.

### **Ailanfon neu ddistrywio mewnforion anghyfreithlon**

6.-(1) Wedi arolygu neu archwilio unrhyw gnau Brasil, os yw'n ymddangos i swyddog awdurdodedig awdurdod iechyd porthladd neu yn ôl y digwydd awdurdod bwyd eu bod wedi'u cludo i Gymru yn groes i reoliad 3(1) neu wedi'u cludo i Gymru yn groes i reoliad 2(2), wedi iddo ymgynghori'n briodol â pherson y mae'n ymddangos iddo mai ef yw'r mewnforiwr, caiff gyflwyno hysbysiad i'r person hwnnw ac sy'n gorchymyn -

- (a) ailanfon y cnau Brasil i'r wlad y maent yn tarddu ohoni o fewn y cyfnod rhesymol a bennir yn yr hysbysiad, ond dim ond os bodlonir gofynion Erthygl 6 o Benderfyniad y Comisiwn; neu
- (b) (pan na fodlonir y gofynion hynny) distrywio'r cnau Brasil o fewn y cyfnod rhesymol a bennir.

(2) Mewn unrhyw achos pan ganiateir dwyn apêl o'r fath a grybwyllir ym mharagraff (3) rhaid i'r hysbysiad a gyflwynir o dan baragraff (1) ddatgan -

- (a) hawl apelio i lys ynadon; a
- (b) y cyfnod erbyn pryd y caniateir dwyn yr apêl.

(3) Caiff unrhyw berson sy'n tybio iddo gael cam oherwydd penderfyniad swyddog awdurdodedig i gyflwyno hysbysiad o dan baragraff (1) apelio i lys ynadon a fydd yn penderfynu a gyflwynwyd yr hysbysiad yn gyfreithlon ai peidio.

(4) Chwe diwrnod o'r dyddiad pryd cyflwynwyd yr hysbysiad ac eithrio dydd Sadwrn, dydd Sul a Gwyliau Cyhoeddus yw'r cyfnod erbyn pryd y caniateir dwyn yr apêl a grybwyllir ym mharagraff (3) ac at ddibenion y paragraff hwn bernir bod gwneud y gŵyn yn gyfystyr â dwyn yr apêl.

(5) Drwy gyfrwng cwyn yn erbyn gorchymyn fydd y weithdrefn ar apêl i lys ynadon o dan baragraff (1980) a bydd Deddf Llysoedd Ynadon 1980(a) yn gymwys i'r achos.

(6) Os yw'r llys yn caniatáu apêl o dan baragraff (3) rhaid i'r awdurdod dan sylw dalu iawndal i berchennog y cnau Brasil dan sylw am unrhyw ddibrisiant yn eu gwerth sy'n dod yn sgil y camau a gymerir gan y swyddog awdurdodedig.

(7) Penderfynir unrhyw gwestiwn y mae dadl yn ei gylch ynghylch hawl i iawndal neu swm iawndal sy'n daladwy o dan baragraff (6) drwy gymrodeddu.

(8) Bydd unrhyw berson sy'n torri telerau hysbysiad a gyflwynir o dan baragraff (1) yn euog o dramgwydd ac yn agored ar gollfarn ddiannod i ddirwy nad yw'n

under the analyst's direction.

### **Re-dispatch or destruction of illegal imports**

6.-(1) If on an inspection or examination of any Brazil nuts 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) that officer may after appropriate consultation with a person appearing to him or her to be the importer serve on that person a notice ordering -

- (a) the re-dispatch of the Brazil nuts to the country of origin within such reasonable period as shall be specified in the notice, but only if the requirements of Article 6 of the Commission Decision are complied with; or
- (b) (where those requirements are not complied with) the destruction of the Brazil nuts 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' Court Act 1980(a) shall apply to the proceedings.

(6) If the court allows an appeal brought under paragraph (3) the authority concerned shall compensate the owner of the Brazil nuts 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

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(a) 1980 p. 43.

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(a) 1980 c. 43.



uwch na lefel 5 ar y raddfa safonol neu i garchar am dymor nad yw'n hwy na thri mis.

exceeding level 5 on the standard scale or to imprisonment for a term not exceeding three months.

Llofnodwyd ar ran Cynulliad Cenedlaethol Cymru o dan adran 66(1) o Ddeddf Llywodraeth Cymru 1998(a).

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998(a).

2 Medi 2003

2nd September 2003

*Jane E. Hutt*

Y Gweinidog dros Iechyd a Gwasanaethau Cymdeithasol.

Minister for Health and Social Services.

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(a) 1998 p.38.

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(a) 1998 c.38.





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OFFERYNNAU STATUDOL

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**2003 Rhif 2254 (Cy.224)**

**BWYD, CYMRU**

Rheoliadau Bwyd (Cnau Brasil)  
(Rheolaeth Frys) (Cymru)  
2003

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STATUTORY INSTRUMENTS

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**2003 No. 2254 (W.224)**

**FOOD, WALES**

The Food (Brazil Nuts)  
(Emergency Control) (Wales)  
Regulations 2003

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