
WELSH STATUTORY INSTRUMENTS

2002 No. 2296

**The Food (Figs, Hazelnuts and Pistachios from Turkey)
(Emergency Control) (Wales) (No. 2) Regulations 2002**

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); 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 a person at any premises which that person is authorised to enter by virtue of regulation 4(3)(b) of the Food (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Wales) (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—
 - (i) in the case of controlled Turkish products other than hazelnuts, the methods of taking samples described or referred to in Annex I to Directive [98/53/EC](#), and
 - (ii) in the case of hazelnuts, those methods, but subject to the modifications specified in the third sub-paragraph of Article 1.6 of the Commission Decision;
- (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 (Figs, Hazelnuts and Pistachios from Turkey) (Emergency Control) (Wales) (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 Turkish products, the authorised 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 additional measures concerning the official control of foodstuffs⁽¹⁾;
- (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⁽²⁾, 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) the analyst may demand the payment in advance of such reasonable fee as the analyst 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 that party 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.

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

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