

STATUTORY INSTRUMENT

S.I. No. 92 of 2000

European Communities (Labelling,
Presentation and Advertising of
Foodstuffs) Regulations, 2000
(Pn 8423)

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I, MARY HARNEY, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972), and for the purpose of giving effect to Council Directive No. 79/112/EEC of 18 December 1978¹, as amended by Council Directive No. 86/197/EEC of 26 May 1986², Commission Directive No. 87/250/EEC of 15 April 1987³, Council Directive No. 89/395/EEC of 14 June 1989⁴, Commission Directive No. 91/72/EEC of 16 January 1991⁵, Commission Directive No. 93/102/EC of 16 November 1993⁶ as amended by Commission Directive No. 95/42/EC of 19 July 1995⁷, Commission Directive No. 94/54/EC of 18 November 1994⁸ as amended by Council Directive No. 96/21/EC of 29 March 1996⁹, Directive 97/4/EC of the European Parliament and of the Council of 27 January 1997¹⁰ and Commission Directive 1999/10/EC of 8 March 1999¹¹, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations, 2000.

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1. O.J. No. L33, 8.2.79, p.1
 2. O.J. No. L144, 29.5.86, p.38
 3. O.J. No. L113, 30.4.87, p.57
 4. O.J. No. L186, 30.6.89, p.17
 5. O.J. No. L42, 15.2.91, p.27
 6. O.J. No. L291, 25.11.93, p.14
 7. O.J. No. L182, 2.8.95, p.20
 8. O.J. No. L300, 23.11.94, p.14
 9. O.J. No. L88, 5.4.96, p.5

10. O.J. No. L43, 14.2.97, p.21

11. O.J. No. L69, 16.3.99, p.22

2. (1) In these Regulations -

"advertise" includes every form of advertising, whether in a publication, by video, sound broadcasting, television, electronic communication or radio, by display of notices, signs, labels, showcards or goods, by distribution of samples, circulars, catalogues, price lists or other material, by exhibition of pictures, photographs, models or films, or in any other way;

"authorised officer" means -

(a) an officer of the Director of Consumer Affairs, or

(b) a person authorised in writing by the Minister for Health and Children to be an authorised officer for the purposes of these Regulations;

"Council Directive No. 79/112/EEC" means Council Directive No. 79/112/EEC of 18 December 1978¹;

"Directive 97/4/EC" means Directive 97/4/EC of the European Parliament and of the Council of 27 January 1997¹⁰;

1. O.J. No. L33, 8.2.79, p.1

10. O.J. No. L43, 14.2.97, p.21

"Directives" means Council Directive No. 79/112/EEC of 18 December 1978¹, as amended by Council Directive No. 86/197/EEC of 26 May 1986², Commission Directive No. 87/250/EEC of 15 April 1987³, Council Directive No. 89/395/EEC of 14 June 1989⁴, Commission Directive No. 91/72/EEC of 16 January 1991⁵, Commission Directive No. 93/102/EC of 16 November 1993⁶ as amended by Commission Directive No. 95/42/EC of 19 July 1995⁷, Commission Directive No. 94/54/EC of 18 November 1994⁸ as amended by Council Directive No. 96/21/EC of 29 March 1996⁹, Directive 97/4/EC of the European Parliament and of the Council of 27 January 1997¹⁰ and Commission Directive 1999/10/EC of 8 March 1999¹¹;

"sell" includes an agreement or offer to sell, or displaying for sale, or inviting an offer to buy, and cognate words shall be construed accordingly.

(2) A word or expression that is used in these Regulations and is also used in the Directives has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Directives.

1. O.J. No. L33, 8.2.79, p.1

2. O.J. No. L144, 29.5.86, p.38

3. O.J. No. L113, 30.4.87, p.57

4. O.J. No. L186, 30.6.89, p.17

5. O.J. No. L42, 15.2.91, p.27

6. O.J. No. L291, 25.11.93, p.14

7. O.J. No. L182, 2.8.95, p.20

8. O.J. No. L300, 23.11.94, p.14

9. O.J. No. L88, 5.4.96, p.5

10. O.J. No. L43, 14.2.97, p.21

11. O.J. No. L69, 16.3.99, p.22

3. The Merchandise Marks (Prepacked Goods) (Marking and Quantities) Order, 1973 (S.I. No. 28 of 1973), the Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order, 1973 (S.I. No. 267 of 1973), the Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order, 1979 (S.I. No. 222 of 1979), the Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order, 1981 (S.I. No. 394 of 1981), the Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order, 1983 (S.I. No. 367 of 1983), the Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order, 1985 (S.I. no. 295 of 1985), the Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order, 1986 (S.I. No. 100 of 1986), the Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order, 1989 (S.I. No. 284 of 1989), and the Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order, 1990 (S.I. No. 266 of 1990), in so far as they require containers in which goods are packed to bear notices complying with those Orders, shall not apply in relation to foodstuffs that comply with the Directives and these Regulations.

4. (1) A person shall not sell, present or advertise foodstuffs, or provide free samples of foodstuffs, unless they comply with the Directives and these Regulations.

(2) A person who fails to comply with paragraph (1) of this Regulation shall be guilty of an offence.

5. (1) These Regulations shall not apply to the sale of -

(i) (a) prepackaged foodstuffs that are prepackaged by a person who sells the foodstuffs by retail on the premises where they are prepackaged or from a vehicle used by him or her, or

(b) flour confectionery prepackaged for sale on premises where business is carried on by the person by whom the foodstuffs are produced,

(ii) any foodstuffs where the sale is a sale to the ultimate consumer or mass caterer without prepackaging, or

(iii) any foodstuffs which are packaged on the sales premises at the request of the ultimate consumer or mass caterer,

if the foodstuffs comply with paragraph (2) of this Regulation.

(2) Where foodstuffs specified in -

(a) paragraph (1)(i) of this Regulation are sold, they shall bear indications of the names of the foodstuffs on the labelling complying with the Directives, or

(b) paragraph (1)(ii) and (iii) of this Regulation are sold, then, at the option of the seller, either -

(i) they shall bear indications of the names of the foodstuffs on the labelling in accordance with the Directives, or

(ii) the names of the foodstuffs shall be stated in a notice displayed in a prominent position near the point of sale and otherwise complying with these Regulations.

(3) A notice displayed pursuant to this Regulation shall be deemed not to comply with this Regulation unless -

(a) the particulars therein are easily visible, clearly legible and indelible and are not in any way hidden, obscured or interrupted by other written or pictorial matter, and

(b) the notice is easily visible to a purchaser of the foodstuffs to which it relates at the point of sale thereof and is not hidden or obscured.

(4) (a) Subject to subparagraph (b) of this paragraph, these Regulations shall not apply to the sale of individually wrapped fancy confectionery products which are not enclosed in any further packaging and which are intended for sale as single items.

(b) Where foodstuffs specified in subparagraph (a) of this paragraph are sold, they shall bear indications on the labelling complying with the Directives of the names of the foodstuffs, and the names and addresses of the manufactures, packers or sellers thereof.

(5) These Regulations shall not apply to foodstuffs intended to be exported to another country other than a Member State of the European Communities.

(6) A person who fails to comply with paragraph (2), (3) or (4)(b) of this Regulation shall be guilty of an offence.

6. (1) Where prepackaged prepared meals or prepackaged sandwiches, filled rolls or similar bread products are sold -

(i) they shall bear indications on the labelling complying with the Directives of the names of the foodstuffs, or

(ii) the names of the foodstuffs shall be stated in a notice displayed in a prominent position near the point of sale and otherwise complying with these Regulations.

(2) A person who fails to comply with paragraph (1) of this Regulation shall be guilty of an offence.

7. Notwithstanding anything in the Directives, Article 3.1(3) and 8 of Council Directive No. 79/112/EEC shall not apply to sugar confectionery products, being products that have a net weight of less than 50 grams.

8. Notwithstanding any provision to the contrary in the Directives, in the case of milk and milk products put in glass bottles intended for re-use, the provisions of Council Directive No. 79/112/EEC relating to the giving of particulars provided for in Article 3 thereof shall, by virtue of paragraph 6 of Article 11 (inserted by paragraph 21 of Article 1 of Council Directive No. 89/395/EEC of 14 June 1989⁴) of Council Directive No. 79/112/EEC, be deemed to be complied with if subparagraphs (1), (3) and (4)

and subparagraph (6) (in so far as it relates to the indication of the name or business name of the manufacturer, packager or seller of foodstuffs) of paragraph 1 of the said Article 3 are complied with.

9. (1) An indication of particulars on the labelling of foodstuffs whose durability has been extended by means of packaging gases authorised pursuant to Council

Directive No. 89/107/EEC of 21 December 1988¹², European Parliament and Council Directive No. 95/2/EC of 20 February 1995¹³ as amended by Directive 96/85/EC of the European Parliament and of the Council of 19 December 1996¹⁴ and Directive 98/72/EC of the European Parliament and of the Council of 15 October 1998¹⁵, shall be in accordance with Commission Directive No. 94/54/EC of 18 November 1994⁸.

(2) A foodstuff whose durability has been extended by means of packaging gases shall not be sold, presented or advertised nor shall free samples be provided unless the labelling of the foodstuff complies with paragraph (1) of this Regulation.

4. O.J. No. L186, 30.6.89, p.17

8. O.J. No. L300, 23.11.94, p.14

12. O.J. No. L40, 11.2.89, p.27

13. O.J. No. L61, 18.3.95, p.1

14. O.J. No. L86, 28.3.97, p.4

15. O.J. No. L295, 4.11.98, p.18

(3) A person who fails to comply with paragraph (2) of this Regulation shall be guilty of an offence.

10. (1) Without prejudice to Article 3 of Council Directive No. 79/112/EEC, as amended by Directive 97/4/EC, the labelling of foodstuffs listed in Article 1 of Council Directive 96/21/EC of 29 March 1996⁹ shall include additional particulars as set out in that Article.

(2) A foodstuff shall not be sold, presented or advertised nor shall free samples be provided unless the labelling of the foodstuff complies with paragraph (1) of this Regulation.

(3) A person who fails to comply with paragraph (2) of this Regulation shall be guilty of an offence.

11. Notwithstanding anything in Council Directive No. 79/112/EEC, Article 3.1(6) shall, in the case of butter produced in the State, be deemed to be complied with if an

indication is given in accordance with Council Directive No. 79/112/EEC of the manufacturer, packager or seller of the butter.

9. O.J. No. L88, 5.4.96, p.5

12. European Parliament and Council Directive No. 95/2/EC of 20 February 1995¹³, European Parliament and Council Directive No. 94/35/EC of 30 June 1994¹⁶ as amended by European Parliament and Council Directive No. 96/83/EC of 19

December 1996¹⁷, and European Parliament and Council Directive No. 94/36/EC of 30 June 1994¹⁸ shall apply to the designation of ingredients in accordance with the second indent of Article 6.5(b) of Council Directive No. 79/112/EEC as amended by Directive 97/4/EC.

13. (1) The requirement in Article 8.2(d) of Council Directive No. 79/112/EEC in relation to the indication of the total number of individual packages in a prepackaged item consisting of two or more individual packages shall not apply in relation to prepackaged items consisting of two or more individually wrapped slices of cheese or two or more individually wrapped pieces of sugar confectionery, being items which are not intended to be units of sale.

(2) Article 8.1 of Council Directive No. 79/112/EEC shall not apply in relation to foodstuffs normally sold by number if the number of items can be clearly seen and easily counted from the outside or, if not, is indicated on the labelling.

13. O.J. No. L61, 18.3.95, p.1

16. O.J. No. L237, 10.9.94, p.3

17. O.J. No. L48, 19.2.97, p.16

18. O.J. No. L237, 10.9.94, p.13

(3) An indication of alcoholic strength in the labelling of beverages referred to in the second paragraph of Article 10a of Council Directive No. 79/112/EEC shall be in accordance with Commission Directive 87/250/EEC of 15 April 1987³.

(4) A person who fails to comply with paragraph (3) of this Regulation shall be guilty of an offence.

14. (1) Indication of particulars on the labelling or advertising of foodstuffs in pursuance of Council Directive No. 79/112/EEC and these Regulations shall be at least in the English language or the Irish and English languages.

(2) A person who fails to comply with paragraph (1) of this Regulation shall be guilty of an offence.

15. (1) An authorised officer shall be furnished with a warrant of his or her appointment as an authorised officer and when exercising any power conferred on an authorised officer by these Regulations shall, if requested by any person affected, produce the warrant or a copy thereof to that person.

(2) For the purposes of ensuring compliance with these Regulations and the Directives an authorised officer may -

3. O.J. No. L113, 30.4.87, p.57

(a) at all reasonable times, enter and inspect any premises in which he or she has reasonable grounds for believing that any foodstuffs are kept, sold or being manufactured,

(b) at all reasonable times, enter any railway wagon, vehicle, ship, vessel or aircraft in which he or she has reasonable grounds for believing that any foodstuffs are being transported for sale or kept for sale,

(c) require the owner or any person employed at the premises or any person in charge thereof to give to him or her such information in the person's power or control that the officer may reasonably require and to produce to him or her any records (in whatever form kept) or books or documents (including labels and fiches) found by or produced to the officer under this Regulation,

(d) at such premises, inspect and take copies of, or extracts from any books, records or other documents (including in the case of information in non-legible form a copy of or extract from such information in permanent legible form),

(e) inspect and copy or extract information from any data (within the meaning of the Data Protection Act, 1988 (No. 25 of 1988)), found or produced to the officer under this Regulation,

(f) require any person, by or on whose behalf data equipment is or has been used on the premises in relation to the business of selling or marketing foodstuffs or any person having charge of, or otherwise concerned with the operation of, the data equipment or any associated apparatus or material, to afford the officer all reasonable assistance in relation to its use thereto,

(g) carry out or have carried out such examinations, tests, inspections and checks of any foodstuffs found there as he or she reasonably considers necessary,

(h) take such samples of any foodstuffs or of materials or articles used or intended for use in the manufacture or preparation of foodstuffs which he or she finds in the course of his or her inspection,

(i) secure for later inspection the premises or any foodstuffs found therein.

(3) (a) Where a sample is taken pursuant to this Regulation, the authorised officer concerned shall divide the sample into not more than four approximately equal parts each of which he or she shall mark in such a way as to identify it as a part of the sample taken by the officer.

(b) Where an authorised officer takes a sample consisting of a foodstuff contained in unopened containers and the division into parts of the foodstuff -

(i) is not reasonably practicable, or

(ii) might affect the composition or impede the proper analysis

of the contents, the authorised officer shall divide the containers into not more than four lots each of which he or she shall mark in such a way as to identify it as a part of the sample taken by the officer.

(c) In proceeding for an offence under these Regulations, the result of any test, examination or analysis of, or report on, a

sample taken pursuant to this Regulation shall not be adduced

unless before the proceedings were instituted one of the parts

into which the sample was divided pursuant to this Regulation

was left with or transmitted to the defendant.

(4) A person who obstructs or interferes with an authorised officer in the exercise of his or her powers under this Regulation or, without reasonable excuse, does not comply with a requirement of an authorised officer under this Regulation or who, in purported compliance with such a requirement, gives information to an authorised officer that the person knows to be false or misleading in a material respect shall be guilty of an offence.

(5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless he or she has obtained a warrant from the District Court under Regulation 16 of these Regulations authorising such entry.

(6) An authorised officer, where he or she considers it necessary, may require a member of the Garda Síochána to assist him or her when performing any powers conferred on an authorised officer by this Regulation which involves the breaking open of any premises or any other action in which the use of force may be necessary and is lawful.

(7) A person appointed as an authorised officer under the European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations, 1982 (S.I. No. 205 of 1982), where the appointment is in force immediately before the coming into force of these Regulations, shall continue to be so appointed as if appointed under this Regulation.

16. If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for believing that there are foodstuffs or information relating thereto held on any premises which an authorised officer requires to inspect, the judge may issue a warrant authorising an authorised officer, accompanied if appropriate by other authorised officers or by a member or members of the Garda Síochána, at any time or times within one month from the date of issue of the warrant, on production of the warrant if so requested, to enter that premises, if need be by reasonable force, and exercise all or any of the powers conferred on an authorised officer by Regulation 15 of these Regulations.

17. If any person fraudulently -

(a) tampers with any foodstuff so as to procure that any sample of it taken under Regulation 15 of these Regulations does not correctly represent the product, or

(b) tampers or interferes with any sample taken under Regulation 15 of these Regulations,

he or she shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500 or to imprisonment for a term not exceeding 3 months or to both.

18. (1) An offence under these Regulations may be prosecuted by the Director of Consumer Affairs or the Eastern Regional Health Authority or a health board, in whose functional area the offence was committed.

(2) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding £1,500.

19. (1) In proceedings for an offence under these Regulations in which it is proved that particulars are given on the labelling of the foodstuffs concerned and that the foodstuffs do not comply with the Directives or these Regulations by reason of the

incorrectness of one or more of the particulars so given or by reason of the omission of one or more of the particulars required by the Directives and these Regulations to be given, it shall be a defence for the defendant to prove:

(a) (i) that he or she received the foodstuffs as being in compliance with the Directives and these Regulations and with a written warranty to that effect,

(ii) that he or she had no reason to believe at the time when he or she disposed of the foodstuffs that they did not comply with the Directives and these Regulations, and

(iii) that the foodstuffs, when disposed of by him or her were in the same state as when he or she received them,

and

(b) that he or she took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or herself or any other person under his or her control.

(2) (a) A statement by the manufacturer, importer or seller of foodstuffs in an invoice or on a label attached to the foodstuffs or on the packet or container in which the foodstuffs are sold that the foodstuffs comply with the Directives and these Regulations shall be deemed for the purposes of paragraph (1) (a) of this Regulation to be a warranty.

(b) A statement of the kind referred to in subparagraph (a) of this paragraph by the manufacturer of imported foodstuffs shall be deemed, for the purposes of this paragraph, to have been made by the importer of the foodstuffs.

(3) A person shall not, without leave of the court, be entitled to rely on the defence in paragraph (1) of this Regulation unless, not less than 7 clear days before the court hearing, he or she has served on the prosecutor a notice in writing giving notice that he or she proposes to rely on that defence.

20. Where an offence under these Regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate shall be guilty of an offence and be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

21. The following are hereby revoked:

(a) the European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations, 1982 (S.I. No. 205 of 1982),

(b) the European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Commencement) Regulations, 1983 (S.I. No. 238 of 1983),

(c) the European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Amendment) Regulations, 1987 (S.I. No. 214 of 1987),

(d) the European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Amendment) Regulations, 1988 (S.I. No. 202 of 1988),

(e) the European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Amendment) Regulations, 1991 (S.I. No. 228 of 1991),

(f) the European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Amendment) Regulations, 1995 (S.I. No. 379 of 1995), and

(g) the European Communities (Labelling, Presentation and Advertising of Foodstuffs) (Amendment) Regulations, 1997 (S.I. No. 151 of 1997).

GIVEN under my Official Seal,

this 29th day of March, 2000.

L.S.

MARY HARNEY

Minister for Enterprise, Trade

and Employment. **EXPLANATORY NOTE**

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These composite Regulations revoke and replace the European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations, 1982 (S.I. No. 205 of 1982) (as amended). The Regulations also give effect to Directive 97/4/EC of the European Parliament and of the Council, which amends Council Directive 79/112/EEC on the labelling, presentation and advertising of foodstuffs, and Commission Directive 1999/10/EC, which provides for derogations from Council Directive 79/112/EEC as amended by Directive 97/4/EEC.

As well as consolidating existing legislation, the Regulations, in implementing two new directives, provide better information to the consumer about the nature and characteristics of certain foodstuffs. In certain specified circumstances food manufactures will be required to state on the label the quantity of an ingredient used in the manufacture or preparation of certain foodstuffs. In effect, unless specifically exempted, the quantity, indicated as a percentage, must be shown where the ingredient appears in the sales name, is otherwise emphasised on the label or is usually associated with the product.

In addition, the use of 'customary' sales names is permissible in the case of products to be sold in another Member State and changes are made to the rules governing 'single ingredient' products, designation of ingredients and the language of labelling.

Published by the Stationary Office, Dublin 2,