

S.I. No. 289 of 2003

European Communities (Marketing of Sugar Products) Regulations 2003

I, Joe Walsh, Minister for Agriculture and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving effect to Council Directive 2001/111/EC of 20 December 2001¹, hereby make the following regulations-

Citation and commencement

1. These Regulations may be cited as the European Communities (Marketing of Sugar Products) Regulations 2003 and come into operation on 12 July 2003.

Interpretation

2.(1) In these Regulations –

“authorised officer” means –

- (a) a person appointed under Regulation 5(1),
- (b) an authorised officer under the Regulations of 2002,
- (c) a member of the Garda Síochána, or
- (c) an officer of Customs and Excise;

“Council Directive” means Council Directive 2001/111/EC of 20 December 2001;

“Director of Consumer Affairs” has the same meaning as in section 9 of the Consumer Information Act 1978 (No. 1 of 1978);

“Health Board” has the same meaning as in the Health Act 1970 (No. 1 of 1970);

“Minister” means the Minister for Agriculture and Food;

“place on the market” includes barter, offer or expose for sale, possess for sale, invite an offer to buy or otherwise supply whether for reward or otherwise;

“Regulations of 2002” means the European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2002 (S.I. No. 483 of 2002);

¹ O.J. No. L 10 of 12.1.2002, p.53.

“sell” includes offer, expose or keep for sale, invite an offer to buy, or distribute (whether for reward or not) and cognate words shall be construed accordingly;

“sugar product” means a product to which Part A of the Annex to the Council Directive applies except icing sugars, candy sugars and sugars in loaf form;

“supply” includes give without reward.

“vehicle” includes a ship, hovercraft, aircraft and offshore installation.

- (2) A word or expression that is used in the Directive and is also used in these Regulations has, unless the contrary intention appears, the same meaning in these Regulations as in the Directive.
- (3) In these Regulations, unless the contrary intention appears, reference to a Regulation is to a Regulation of these Regulations and a reference to a paragraph is a reference to the paragraph in which the reference occurs.

Restriction on placing on the market

- 3.(1) Subject to paragraph (2), a person shall not place a sugar product on the market unless, subject to Article 2 of the Council Directive, the product complies with the Regulations of 2002.
- (2) A person may place a sugar product manufactured before 12 July 2004 on the market in accordance with the Regulations revoked by Regulation 10 until stocks run out.
- (3) A person shall not have in his or her possession or under his or her control a sugar product placed on the market in contravention of this Regulation or a sugar product that is not labelled in accordance with Regulation 4.

Labelling

- 4.(1) A person shall not place a sugar product on the market unless the product is labelled in accordance with the Regulations of 2002 and this Regulation or, in case of conflict, this Regulation.
- (2) A person shall label a sugar product with a product name specified in the Annex to the Council Directive that applies to the product, may label it with commonly used qualifying terms and shall not label it with another product name.
- (3) Subject to paragraph 4, a person shall not label a product other than a sugar product with a product name specified in the Annex to the Council Directive.
- (4) A person may label a product (that is not a sugar product) in the form in which it is offered for sale to a consumer with a product name specified in the Annex to

the Council Directive if the first mentioned product cannot be confused with a sugar product.

- (5) The labelling of a sugar product shall, subject to Article 2(2) of the Council Directive, comply with Article 2 (3), (4) and (5) of the Council Directive.

Authorised officers

- 5.(1) The Minister may appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of these Regulations.
- (2) A warrant of appointment as an authorised officer shall be issued to every person appointed under this Regulation.
- (3) When exercising a function conferred on him or her under these Regulations, an authorised officer shall, if requested by a person affected, produce to the person-
- (a) the warrant issued under paragraph (2),
 - (b) the warrant issued under the Regulations of 2002, or
 - (c) evidence that he is a member of the Garda Síochána or an officer of Customs and Excise.
- (4) The Minister may at any time terminate an appointment as an authorised officer, whether or not the appointment was for a fixed period.
- (5) An appointment as an authorised officer shall cease –
- (a) where the Minister terminates it under paragraph (4),
 - (b) where it was for a fixed period, on expiry of that period, or
 - (c) where the person appointed is an officer of Customs and Excise, the Minister, the Director of Consumer Affairs or a Health Board, upon his or her ceasing to be such an officer.
- (6) Nothing in paragraph (5) shall be construed as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.

Powers of authorised officer

- 6.(1) Where an authorised officer has reasonable grounds to suspect that -
- (a) the manufacture, importation, preparation, handling, storage, transport, exportation, distribution, sale or supply of a sugar product is taking place or has taken place in, on, under or from any land, premises or in, on or from any vehicle,

- (b) an offence is being or has been committed under these Regulations in, on, under or from any land, premises or in, on or from any vehicle,
- (c) in, on, under or from any land, premises or in, on or from any vehicle, there is or was a sugar product or any machinery, instrument or other thing used in the manufacture, preparation, handling, storage, transport, exportation, distribution, sale or supply of sugar products,

the authorised officer may, stop any such vehicle or enter (if necessary by force) any such land or premises, or land or premises used in connection with such land or premises, or any such vehicle, and there, or at any other place, and with such persons as the authorised officer considers appropriate- -

- (i) search for and examine or inspect a sugar product or any thing to which subparagraph (c) relates,
- (ii) take, without payment, samples and carry out or cause to be carried out on the samples such tests, analyses, examinations, tests or inspections as he or she considers necessary or expedient,
- (iii) carry out or cause to be carried out, examinations, tests or inspections of the premises or any part thereof and any equipment, plant, machinery or other article, substance or liquid as he or she considers necessary or expedient,
- (iv) seize and detain any thing to which subparagraph (c) relates or anything which is believed to be or to contain a sugar product or an ingredient for a sugar product kept, used or intended to be used in contravention of these Regulations,
- (v) require any person (who shall comply with the requirement) to give his or her name and address and information or produce any book, certificate, document or other record as the authorised officer considers necessary or expedient,
- (vi) examine and take copies of, or extracts from any thing aforesaid,
- (vii) seize and detain any thing aforesaid or other thing that he or she has reasonable cause to suspect may be evidence of an offence under these Regulations,
- (viii) require any person, being the owner or person in charge of a sugar product, or the owner or occupier of, or employed in or on, lands or premises so entered to give assistance, to carry out such instructions and to give such information as may be reasonably necessary for the purposes of this Regulation, and

- (ix) require any person, being the person in charge of or control of a vehicle to refrain from moving it and to give assistance, to carry out such instructions and to give such information as may be reasonably necessary for the purposes of this Regulation.
- (2) An authorised officer shall not enter, other than with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under paragraph (3) other than if he or she has reasonable cause to suspect that, before a search warrant could be sought in relation to the dwelling under paragraph (3), anything to which paragraph (1) relates is being or is likely to be destroyed or disposed.
- (3) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting that-
 - (a) there is or was or is intended to be on any land or in any premises or vehicle a sugar product in relation to which a contravention of these Regulations is being or has been or is intended to be committed and that such land, premises or vehicle or any part thereof consists of a dwelling, or,
 - (b) evidence of or relating to the commission of an offence under these Regulations is to be found in, on or under any land or premises or in or on any land or premises or in or on any vehicle and that such land, premises or vehicle or any part thereof consists of a dwelling, or
 - (c) a document, directly or indirectly relating to, or connected with, a transaction or dealing which was, or an intended transaction or dealing which would if carried out be, an offence under these Regulations, is in the possession or under the control of a person in, on or under any land or premises or in or on any vehicle and that such land, premises or vehicle or any part thereof consists of a dwelling,

the judge may issue a search warrant under this paragraph.

- (4) A search warrant issued under paragraph (3) shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers as the named authorised officer thinks necessary, at any time or times, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by force) the land, premises or vehicle named in the warrant.
- (6) Where any land, premises or vehicle is entered pursuant to a warrant issued under paragraph (3), an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under this Regulation.

Obstruction

7. A person shall not obstruct or impede an authorised officer in the due exercise of a function conferred or exercisable by the officer under these Regulations, fail to comply with a requirement under Regulation 6(v), (viii) or (ix) or give to an authorised officer information that is false or misleading.

Disposal of thing seized

- 8.(1) If a sugar product or other thing has come into the possession of an authorised officer, on the application before the District Court of the Minister, the court may, at its discretion and where it is satisfied that an offence has been committed, order the forfeiture of the sugar product or other thing.
 - (2) An order shall not be made by a court under this Regulation unless the court is satisfied that in the circumstances all practicable steps have been taken to notify any person of the proceedings relating to the application for the order and who, in the opinion of the court, should be given the opportunity of being heard by it on that application.
 - (3) The jurisdiction conferred by paragraph (1) may be exercised by the Judge of the District Court having jurisdiction in the District Court District where the sugar product or other thing was situated immediately before it came into the possession of an authorised officer.
 - (4) Any thing ordered to be forfeited under this Regulation shall be disposed of as the Minister thinks fit and any moneys arising from such disposal shall be paid into or disposed of the benefit of the Exchequer.

Offences

- 9.(1) A person who, by act or omission, contravenes Regulation 3, 4 or 7 is guilty of an offence and liable, on conviction, to a fine not exceeding €3,000.
 - (2) An offence under these Regulations may be prosecuted by –
 - (a) the Minister, or
 - (b) the Director of Consumer Affairs, or
 - (c) the Health Board in whose functional area the alleged offence occurred.
 - (3) Where an offence under these Regulations has been committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an

offence and shall be liable to be proceeded against and punished as if guilty of the first-mentioned offence.

- (4) Where the affairs of a body corporate are managed by its members, paragraph (3) shall apply in relation to the acts and defaults of a member in connection with the functions of management as if such a member were a director or manager of the body corporate.

Revocation

10. The Food Standards (Certain Sugars) European Communities) Regulations 1975 (S.I. No. 118 of 1975) and the Food Standards (Certain Sugars) (European Communities) Regulations 1981 (S.I. No. 412 of 1981) are revoked.

GIVEN under my Official Seal,
July 2003

Joe Walsh
Minister for Agriculture and Food