

Statutory Instruments.

S.I. No. 894 of 2004

European Communities (Control of Organisms Harmful to Plants and Plant Products) Regulations 2004

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European Communities (Control of Organisms Harmful to Plants and Plant Products) Regulations 2004

I, Mary Coughlan, 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), and for the purpose of giving effect to Council Directive No. 2000/29/EC of 8 May 2000¹, as amended by Commission Directive No. 2001/33/EC of 8 May 2001², Commission Directive No. 2002/28 of 19 March 2002³, Commission Directive 2002/36/EC of 29 April 2002⁴, Council Directive 2002/89/EC of 28 November 2002⁵, Commission Directive No. 2003/22/EC of 24 March 2003⁶, Commission Directive No. 2003/47/EC of 4 June 2003⁷, Commission Directive 2003/116/EC of 4 December 2003⁸, Commission Directive 2004/31/EC of 17 March 2004⁹, Commission Directive 2004/70/EC of 28 April 2004¹⁰, , Commission Directive 2004/103/EC of 7 October 2004¹¹ and Commission Directive 2004/105/EC of 15 October 2004¹² hereby make the following regulations-

Citation

1. These Regulations may be cited as the European Communities (Control of Organisms Harmful to Plants and Plant Products) Regulations 2004 and come into operation on 1 January 2005.

Interpretation

- 2.(1) In these Regulations—

"authorised officer" means –

- (a) a person appointed under Regulation 11,
- (b) a member of the Garda Síochána, or
- (c) an officer of Customs and Excise;

¹ O.J. No. L 169, 10.7.2000, p. 1

² O.J. No. L 127, 9.5.2001, p. 42.

³ O.J. No. L 77, 20.3.2002, p. 23.

⁴ O.J. No. L 116, 3.5.2002, p. 16.

⁵ O.J. No. L 355, 30.12.2002, p. 45.

⁶ O.J. No. L 78, 25.3.2003, p. 10.

⁷ O.J. No. L 138, 5.6.2003, p. 47.

⁸ O.J. No. L321, 6.12.2003, p.36.

⁹ O.J. No. L85, 23.3.2003, p.18.

¹⁰ O.J. No. L127, 29.4.2004, p.97.

¹¹ O.J. No. L313, 12.10.2004, p.16

¹² O.J. No. L319, 20.10.2004, p.9.

"Council Directive" means Council Directive No. 2000/29/EC of 8 May 2000 as amended by Commission Directive No. 2001/33/EC of 8 May 2001, Commission Directive No. 2002/28 of 19 March 2002, Commission Directive 2002/36/EC of 29 April 2002, Council Directive 2002/89/EC of 28 November 2002, Commission Directive No. 2003/22/EC of 24 March 2003, Commission Directive No. 2003/47/EC of 4 June 2003, Commission Directive 2003/116/EC of 4 December 2003, Commission Directive 2004/31/EC of 17 March 2004, Commission Directive 2004/70/EC of 28 April 2004, , Commission Directive 2004/103/EC of 7 October 2004 and Commission Directive 2004/105/EC of 15 October 2004;

"Member State" means a Member State of the European Communities;

"Minister" means the Minister for Agriculture and Food;

"third country" means a State that is not a member of the European Communities;

"vehicle" includes ship, vessel, aircraft, train, container or other such mode of conveyance.

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

Introduction and movement

3. (1) Subject to Regulations 4 and 5 and paragraph (2) a person shall not bring into the State or move within the State -
 - (a) an organism listed in Part A of Annex I to the Council Directive,
 - (b) an organism listed in the first column of Part B of Annex I to the Council Directive opposite the mention of IRL in the second column,
 - (c) a plant, plant product or other thing contaminated with an organism to which subparagraph (a) applies,
 - (d) an organism listed in the first column of Part A of Annex II to the Council Directive to the extent mentioned in the second column,

- (e) subject to Regulation 4, a plant, plant product or other thing listed in Part B of Annex II to the Council Directive where IRL is mentioned in the third column,
- (f) a plant or plant product listed in the second column of Part A of Annex II to the Council Directive if it is contaminated with an organism listed in the first column opposite the mention of the plant or plant product,
- (g) a plant or plant product listed in the second column of Part B of Annex II to the Council Directive opposite the mention of IRL in the third column where the plant or plant product is contaminated with an organism mentioned in the first column,
- (h) a plant or plant product listed in the first column of Part A of Annex III to the Council Directive which originates –
 - (i) in a country named, or
 - (ii) within a geographical area

mentioned in the second column opposite the mention of the plant or plant product,

- (i) a plant, plant product or other thing listed in the first column of Part B of Annex III to the Council Directive,
- (j) a plant, plant product or other thing listed in the first column of Part A of Annex IV to the Council Directive unless each requirement specified in the second column opposite the mention of the plant, plant product or other thing is satisfied,
- (k) a plant, plant product listed in the first column of Part B of Annex IV to the Council Directive opposite the mention of IRL in the third column unless each requirement specified in the second column opposite the mention of the plant, plant product or other thing is satisfied,
- (l) a plant or plant product mentioned in Part A of Annex V to the Council Directive unless such plant or plant product is accompanied by a plant passport, or
- (m) a plant or plant product mentioned in Part B of Annex V to the Council Directive unless such plant or plant product is accompanied by a certificate referred to in Article 13a (3) or (4) of the Council Directive.

- (2) Paragraph (1)(b), (e), (g), (i), (k) or (m) do not apply to a plant, plant product or other thing -

- (a) being transported from one place in the State to another place in the State for the purposes of movement out of the State, or
 - (b) being transported from one place outside the State to another place outside the State through the State.
- (3) A person shall not have in his or her possession or under his or her control an organism, plant, plant product or other thing that has been introduced or moved within the State in contravention of this Regulation.

Introduction from a third country

4. A person shall not introduce a plant, plant product or other thing from a third country unless –
- (a) he or she notifies the Minister at least 72 hours prior to the intended introduction into the State, and
 - (b) at the time of the introduction, permits an examination by an authorised officer of the plant, plant product or other thing together with its packaging and the vehicle in which it is transported at a time and place directed by the Minister.

Movement of plants and plant products out the State

- 5.(1) (a) A person shall not move out of the State or move with such intent , a plant, plant product or other thing listed in Part A of Annex V to the Council Directive unless –
- (i) he or she is registered under Regulation 7,
 - (ii) he or she is authorised to issue plant passports under Regulation 9,
 - (iii) no later than 72 hours before the proposed movement, he or she notifies the Minister in writing of his or her intention to move the plant, plant product or other thing and
 - (iv) he or she makes the plant, plant product or other thing with its intended packing available for examination by an authorised officer.
- (b) A person shall not move out of the State or move with such intent an organism listed in the first column of Part B of Annex I to the Council Directive to a Member State listed in the second column opposite the mention of the organism and which has, as regards the genus of which the organism is a species, the Member State exercised the power contained in Article 3(7) of the Council Directive.
- (c) A person shall not move out of the State or move with such intent a plant or plant product listed in the second column of Part B of Annex II to the Council Directive which is contaminated with an organism listed

in the first column of the said Part B opposite the mention of the plant or plant product to a Member State listed in the third column and which has, as regards the genus of which the organism is a species, exercised the power contained in Article 3(6)(b) of the Council Directive.

(2) Subject to paragraph (3), a person shall not move out of the State a plant, plant product or other thing listed in Annex V to the Council Directive to another Member State unless it is accompanied by either a plant passport or a “reforwarding certificate” issued in accordance with Article 13a(3) and (4) of the Council Directive.

(3) Paragraph (2) does not apply to a plant, plant product or other thing introduced from another Member State in transit to another Member State and which is accompanied by a “reforwarding certificate” issued in accordance with Article 13a(3) and (4) of the Council Directive unless the plant, plant product or other thing has been split up, stored, or its packaging has been changed in the State,

Notification

6. A person who discovers the presence of organism mentioned in Annex I or Annex II shall notify the Minister immediately.

Registration

7. (1) Subject to Regulation 8, a person shall not import, produce, distribute, move or dispatch a plant, plant product or other things unless he or she is entered in a register maintained under this Regulation-

(2) The Minister may enter the name of a person in the register, attach conditions to registration, vary a condition or refuse an application.

(3) An application for registration shall be in a form that contain such information as the Minister may request.

(4) The Minister may revoke an entry from the register on notice in writing to the person named in the register.

Exemption from registration

8. The Minister may if he or she is satisfied that there is no danger of the introduction or spread of harmful organisms –

(a) exempt small producers or processors whose entire production and sale of plants, plant products and other things are intended for final usage by persons within the State who are not professionally involved in plant production, and

(b) exempt local movement of plants, plant products and other things originating from producers exempted under paragraph (a) from examination under Regulation 10(a).

Authorisation

9. (1) The Minister may authorise a person who is registered under Regulation 7 to issue a plant passport in accordance with the Council Directive and these Regulations.

(2) The Minister may attach such conditions to an authorisation as he or she considers necessary.

(3) The Minister may revoke an authorisation on notice in writing to the person so authorised.

(4) Where a person is removed from the register under Regulation 7, any authorisation is also removed.

Direction of Minister

10. If the Minister is satisfied that in a particular case there is no risk of a harmful organism spreading, on receipt of an application in writing, he or she may—

(a) if he or she is satisfied that a circumstance specified in Article 15 of the Council Directive applies in relation to a plant, plant product or other thing, direct that Regulation 3 and 4 shall not apply,

(b) if he or she is satisfied that an organism listed in Part A of Annex 1, Part A of Annex III or Part A of Annex IV to the Council Directive or a plant, plant product or other thing to which Regulation 3, 4, or 5 applies, is to be used for trials, work on varietal selection or other scientific purposes, direct that, subject to such terms and conditions as the Minister may specify, Regulation 3, 4 or 5 shall not apply to such organism, plant, plant product or other thing, or

(c) if he or she is satisfied having considered that a circumstance specified in Article 13b(3) of the Council Directive applies in relation to a plant, plant product or other thing, direct that Regulation 4 shall not apply.

Authorised Officers

- 11.(1) The Minister may, by instrument in writing, appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of some or all of the provisions of these Regulations and the Council Directive as are specified in the instrument.
- (2) A warrant of appointment as an authorised officer shall be issued to every person appointed under this Regulation by the Minister and when exercising a function conferred on the person as an authorised officer such person shall, if requested by a person affected, produce the warrant to that person.
- (3) The Minister may terminate the appointment of an authorised officer appointed by him or her, whether or not the appointment was for a fixed period.
- (4) An appointment as an authorised officer shall cease—
- (a) where it is terminated pursuant to paragraph (3),
 - (b) where it is for a fixed period, on the expiry of that period,
 - (c) where the person appointed is an officer of the Minister, upon the person appointed ceasing to be such an officer.
- (5) Nothing in paragraph (4) shall be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.
- (6) An authorised officer or an expert employed by or acting on the authority of the Commission of the European Communities accompanied by an authorised officer may at all reasonable times enter a premises (other than such part of a premises that is a dwelling) or vehicle where the authorised officer has cause to suspect that -
- (a) the manufacture, importation, preparation, handling, storage, transport, exportation, distribution, sale, supply or use of an organism, plant, plant product or other thing to which the Council Directive refers 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) any land or premises is used for or in connection with the growing, rearing, keeping, storing, exhibiting, selling or transporting of an

organism, plant, plant product or other thing to which the Council Directive refers,

- (d) any land or premises is used for or in connection with the distribution of an organism, plant, plant product or other thing to which the Council Directive refers,
- (e) in, on, under or from any land or premises or in, on or from any vehicle, there is or was an organism, plant, plant product or other thing to which the Council Directive refers or there is or was any food or other thing derived from an organism, plant, plant product or other thing to which the Council Directive refers, or
- (f) in, on, under or from any land or premises or in, on or from any vehicle, there is or was an organism, plant, plant product or other thing to which the Council Directive refers, or any machinery, instruments or other thing used in the manufacture, preparation, handling, storage, transport, exportation, distribution, sale, supply, use or exposed to an organism, plant, plant product or other thing to which the Council Directive refers,

the authorised officer may at all reasonable times-

- (i) enter and inspect any land, premises or vehicle ,
- (ii) inspect the contents of any container in which he or she has reasonable grounds for believing that an organism, plant, plant product or other object is, has been or may be moved, bred, grown, produced, kept, stored, exhibited, transported or offered for sale,
- (iii) examine, inspect and take samples of an organism, plant, plant product or other thing which he or she finds in the course of inspection,
- (iv) carry out or cause to be carried out such measurements, tests or analyses on an organism, plant, plant product, packaging or other thing to which the Council Directive refers,
- (v) examine and take copies of any book, document or any other record in whatever form kept or of extracts from any such record,
- (vi) examine and copy books, records, data or data material (within the meaning in each case of the Data Protection Act 1988 (No. 25 of 1088)) he or she finds there, extract information from any such data and take extracts from any such material,

- (vii) require a person to give his or her name and address and such information or produce any book, certificate, document, other record, plant, plant product or other thing as the authorised officer considers necessary or expedient,
 - (viii) require any person, being the owner or the person in charge of an organism, plant, plant product, packaging or other thing to which the Council Directive refers, 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 *subparagraphs (i) to (vii)*, and
 - (ix) seize and detain any thing (including vehicle) that he or she has reasonable cause to suspect may be evidence of an offence under these Regulations.
- (x) require any person who is for the time being in charge or control of any vehicle so stopped or entered—
- (I) to refrain from moving it, and
 - (II) to give assistance, to carry out such instructions and to give such information as may be reasonably necessary for the purposes of *subparagraphs (i) to (ix)*.

(7) Where an authorised officer examines a plant, plant product or other thing, or its packaging, the officer may do anything which, in his or her opinion, is necessary or expedient to—

- (a) ascertain whether the plant, plant product or other thing is contaminated with an organism listed in Part A of Annex I to the Council Directive,
- (b) in respect of a plant or plant product listed in the second column of Part A of Annex II to the Council Directive, ascertain whether it is contaminated with an organism listed in the first column of the said Part A,
- (c) in respect of a plant, plant product or other thing listed in the first column of Part A of Annex IV to the Council Directive, ascertain whether the requirements specified in the second column of the said Part A opposite are satisfied, or

- (d) in the case of movement out of the State in respect of a plant or plant product listed in the first column of Part B of Annex IV to the Council Directive that is being introduced from the State into another Member State listed in the third column of Part B opposite the mention of the plant or plant product and where other Member State has, as regards the genus of which the plant or plant product is a species, exercised the power contained in Article 5.2 of the Council Directive, ascertain whether or not the requirements indicated in the second column of Part B opposite the mention of the plant or plant product are satisfied,

and the authorised officer may examine the vehicle used to transport the plant, plant product or other thing.

Search warrant

- 12. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting-

- (a) that there is on any land or in a premises, vehicle, vessel, aircraft or container a plant, plant product or other thing which is infested or may be infested with an organism or is at risk of being so infested,

- (b) that a plant, plant product or other thing has come from or through a place where infestation with an organism is or may exist, or

- (c) there is evidence of an offence under these Regulations therein or thereon,

the judge may issue a search warrant.

- (2) A search warrant issued under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers, members of the Garda Síochána and officers of Customs and Excise as the named 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, vessel, aircraft or container named in the warrant.

- (3) Where a premises, land or vehicle, vessel, aircraft or container is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

Disposal or treatment notice

13.(1) Where an authorised officer is of the opinion that –

- (a) a plant, plant product or other thing has been introduced, moved, held in possession or distributed in contravention of these Regulations or the Council Directive,
- (b) an organism is or has been present on a plant, plant product or other thing, including any material in which a plant or plant product or other thing is packed, or
- (c) measures should be taken to prevent the presence and spread of an organism,

he or she may serve or cause to be served on the owner or person who appears to him or her to be in charge, have possession or control of such plant or plant product a notice (in this Regulation referred to as a “Notice”) directing that –

- (i) a plant, plant product or other thing (including objects that are packaged with plant products) be kept in such premises (including on a vehicle) as the officer shall specify in the notice,
 - (ii) such alterations be made to the premises in which a plant or plant product is located as the officer shall specify in the notice,
 - (iii) a plant, plant product or other thing (including objects that are packaged with plant products) be contained, treated, destroyed or disposed of in such manner as the officer shall specify in the notice, or
 - (iv) a plant, plant product or other thing (including objects that are packaged with plant products) be removed from the State in such manner (if any) as may be specified.
- (2) A person, including the master, captain, owner or operator of a vehicle shall comply with a Notice or a requirement of a Notice unless and until the Notice is annulled under paragraph (10).
- (3) A requirement contained in a Notice shall specify a time limit within which the Notice is to be complied with.
- (4) A requirement specified in a Notice (in this paragraph referred to as “the earlier Notice”) may be amended or withdrawn by a further Notice in writing and the earlier Notice shall have effect subject to such amendment or withdrawal.

- (5) A Notice, whether amended under paragraph (4) or not, may require the owner or person who, appears to the authorised officer, to be in charge of a plant, plant product or other thing to choose between one or more of the requirements specified in the Notice and the owner or person shall comply with the requirement that he or she chooses.
- (6)(a) A Notice shall, subject to sub-paragraph (b), be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways –
- (i) by delivering it to the person,
 - (ii) by leaving it at the address at which the person ordinarily resides or, in a case where an address for service has been furnished, at that address,
 - (iii) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case where an address for service has been furnished, at that address, or
 - (iv) where the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the Notice relates to a premises, by delivering it to some person over 16 years of age resident or employed on the premises or by affixing it in a conspicuous position on or near the premises.
- (b) Where a Notice is to be served on or given to a person who is the owner or occupier of a premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words the owner, the occupier or, as the case may require, such other designation as the authorised officer considers appropriate.
- (c) A person shall not at any time within 6 months after a Notice is affixed under paragraph (6)(a)(iv) remove damage or deface the Notice without lawful authority.
- (d) For the purposes of this Regulation, a company within the meaning of the Companies Acts (as defined in Companies (Auditing and Accounting) Act 2003 (No. 44 of 2003) is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.
- (7) A person, being a person effected by a Notice, may, within 7 days of service of the Notice, apply to the Judge of the District Court having jurisdiction in the District Court District where the person ordinarily resides on the grounds that the Notice or any term of the Notice are not reasonable, having regard to these Regulations (in this Regulation referred to as “an appeal”).

- (8) An appeal may be heard at any sitting of the District Court within the appropriate District Court Area.
- (9) Notice of an appeal, which shall contain a statement of the grounds upon which it is alleged that the Notice or any term of the Notice is unreasonable having regard to these Regulations, shall be served on the Minister at least 48 hours prior to the hearing of the appeal and a copy shall be lodged with the appropriate District Court Clerk.
- (10) On the hearing of an appeal, a Judge of the District Court may confirm, amend or annul a Notice.
- (11) A person, including a person on whom a Notice is served, shall not-
- (a) pending the determination of an appeal, deal with a plant, plant product or other thing to which a Notice relates other than under and in accordance with the Notice, or
 - (b) after such appeal, deal with a plant, plant product or other thing to which a Notice relates other than in accordance the Notice or Notice as modified, as the case may be.
- (12) Where -
- (a) a person, by act or omission, fails to comply, whether within the time specified therein or otherwise, with a Notice (including a Notice modified in accordance with paragraph (10)), or
 - (b) an authorised officer has reasonable cause to suspect –
 - (i) that a Notice (including a Notice modified in accordance with paragraph (10)) is not or will not be complied with, or
 - (ii) pending the determination of an appeal, a plant, plant product or other thing to which the Notice relates is or will not be dealt with in accordance with paragraph (11),
- an authorised officer may seize and detain the plant, plant product or other thing (including objects that are packaged with plant products) and sell or dispose of the plant, plant product or other thing in a manner as the authorised officer considers appropriate.
- (13) Subject to paragraph (15), the proceeds of the sale or disposal of a plant, plant product or other thing (including objects that are packaged with plant

products) under paragraph (12) shall be paid to the owner or the person in charge as soon as may be after such sale or disposal and after a person has satisfied the Minister that he or she is the owner or otherwise entitled to the proceeds of the sale or disposal.

- (14) The costs of seizure, sale or disposal of a plant, plant product or other thing (including objects that are packaged with plant products) shall be recoverable by the Minister as a simple contract debt in a court of competent jurisdiction or by deducting the cost from monies due to the owner or the person who, appears to the authorised officer, to be in charge or control of the plant, plant product or other thing.
- (15) The costs of any action required by a Notice shall be borne by the owner or the person, who appears to the authorised officer, in charge or control of a plant, plant product or other thing to which the Notice relates.

Obstruction

14. A person shall not -

- (a) obstruct or impede an authorised officer in the exercise of any of his or her powers under these Regulations,
- (b) fail, without reasonable excuse, to comply with a requirement or direction made by an authorised officer under these Regulation, or
- (c) in purporting to give information required by an authorised officer for the performance of the officer's powers under Regulation 11 -
 - (i) make a statement which he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose any material particular.

Prohibition of forgery and giving false information

15. (1) A person shall not –

- (a) forge a record or document established under these Regulations or the Council Directive or a document purporting to be an extract therefrom (hereafter in this Regulation referred to as "a forged record"),
- (b) alter with intent to defraud or deceive, or utter knowing it to be so altered any notice, record or document established under these Regulations or a document purporting to be an extract therefrom (hereafter in this Regulation referred to as "an altered record"), or

- (c) have, without lawful authority, in his or her possession a forged record or altered record.
- (2) A person, in purported compliance with these Regulations, shall not give information that he or she knows to be false or misleading.

Fees

16. (1) The Minister may charge a fee in respect of an activity under Article 13d(1) of the Council Directive or any other service rendered under these Regulations or the Council Directive such fee, not exceeding the cost, estimated by the Minister, of providing the service to which the fee relates.

(2) The Minister may refuse to provide a service under these Regulations or the Council Directive where a fee required under paragraph (1) is unpaid.

(3) A fee payable pursuant to this Regulation may be recovered by the Minister, from the person by whom it is payable as a simple contract debt in a court of competent jurisdiction.

(4) A fee payable pursuant to this Regulation shall be disposed of for the benefit of the Exchequer in such manner as the Minister for Finance may direct.

(5) The Public Offices Fees Act 1879 does not apply to a fee charged under this Regulation.

(6) The Minister shall publish the fee chargeable under this Regulation from time to time as he or she considers appropriate.

Offences

17.(1) A person who contravenes these Regulations or the Council Directive is guilty of an offence and liable on conviction to a fine not exceeding €3,000 and to a term of imprisonment not exceeding six months or to both.

(2) An offence under these Regulations may be prosecuted by the Minister.

(3) Where an offence under these Regulations has been committed by a body corporate and it 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 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.

On the spot fine

18. (1) Where an authorised officer has reasonable grounds for believing that a person is committing or has committed an offence under these Regulations or the Council Directive he or she may serve a notice in writing on that person stating that –

- (a) person is alleged to have committed the offence,
- (b) the person may during the period of 28 days on the date of the notice make to the Minister a payment of €100 accompanied by the notice, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) Where notice is given under paragraph (1) —

- (a) a person to whom the notice applies may, during the period specified in the notice, make to the Minister at the address specified in the notice the payment specified in the notice accompanied by the notice;
- (b) the Minister receives the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it;
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under these Regulations the onus of proving that a payment pursuant to a notice under this Regulation has been made shall lie on the defendant.

Revocations, adaptations and savers

19.(1) The following are revoked-

- (a) the European Communities (Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition) Regulations 1980 (S.I. No. 125 of 1980),
- (b) the European Communities (Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition)(Amendment) Regulations 1980 (S.I. No. 258 of 1980),

- (c) the European Communities (Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition) (Amendment) Regulations 1981 (S.I. No. 98 of 1981),
 - (d) the European Communities (Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition) (Amendment) Regulations 1982 (S.I. No. 351 of 1982),
 - (e) the European Communities (Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition) Regulations (Amendment) 1984 (S.I. No. 84 of 1984),
 - (f) the European Communities (Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition) Regulations 1984 (S.I. No. 89 of 1984),
 - (g) the European Communities (Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition) (Amendment) Regulations 1993 (S.I. No. 408 of 1993),
 - (h) the European Communities (Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition) (Amendment) Regulations 2003 (S.I. No. 219 of 2003),
 - (i) the European Communities (Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition) (Amendment) (No. 2) Regulations 2003 (S.I. No. 276 of 2003),
 - (j) the European Communities (Introduction of Organisms Harmful to Plants or Plant Products) (Prohibition) (Amendment) (No. 3) Regulations 2003 (S.I. No. 462 of 2003).
- (2) The provisions of the following Orders do not apply to an organism, plant, plant product or other thing referred to in these Regulations or the Council Directive that originates in a Member State -
- (a) the Potatoes Importation (Ireland) Order, 1920,
 - (b) the Destructive Insects and Pests (Ireland) Order, 1922,
 - (c) the Destructive Insects and Pests (Chrysanthemum Midge) (No. 2) Order 1939
 - (d) the Colorado Beetle Order 1945 (S.R. and O., No. 228 of 1945),
 - (e) the Importation of Strawberry Plants and Black Currant and Gooseberry Bushes Order 1946 (S.R. and O. No. 358 of 1946),
 - (f) the Importation of Forest Trees (Prohibition) Order 1949 (S.I. No. 292 of 1949), and
 - (g) the Stem and Bulb Eelworm Order 1966 (S.I. No. 2 of 1966).

(3) An authorised officer appointed under the European Communities (Introduction of Organism Harmful to Plant or Plant Products)(Prohibition) Regulations 1980 (S.I. No. 125 of 1980) as amended and holding office immediately before the commencement of these Regulations continues in office after such commencement as if appointed under these Regulations.

(4) A authorisation granted under the European Communities (Introduction of Organism Harmful to Plant or Plant Products)(Prohibition) Regulations 1980 (S.I. No. 125 of 1980) as amended and in force immediately before the commencement of these Regulations continues in force after such commencement as if granted under these Regulations.

GIVEN under my Official Seal,
22 December 2004

Mary Coughlan
Minister for Agriculture and Food

EXPLANATORY NOTE

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

These Regulations prescribe import, export and movement controls on plants and plant products to comply with European Community measures to prevent the introduction or spread of plant diseases and pests.