

S.I. No. 893 of 2004

European Communities (Introduction of Products of Animal Origin from Third Countries for Human Consumption) 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 further effect to Council Directive 2002/99/EC of 16 December 2002¹, hereby make the following Regulations:

¹ O.J. No. L 18 of 23.1.2003 p.11

Citation and commencement

1. These Regulations may be cited as the European Communities (Introduction of Products of Animal Origin from Third Countries for Human Consumption) 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 8,
(b) an inspector,
(c) an authorised officer within the meaning of Section 17A (inserted by the Diseases of Animals (Amendment) Act 2001 (No. 2 of 2001)) of the Diseases of Animals Act 1966 (No. 6 of 1966), or
(d) a veterinary expert employed by or working under the authority of the Commission of the European Communities and accompanied by an authorised officer appointed under (a), (b) or (c) above;
"Council Directive 97/78" means Council Directive 97/78/EC of 18 December 1997²;

² O.J. No. L 24 of 30.1.1998, p 3

"Council Directive 2002/99" means Council Directive 2002/99/EC of 16 December 2002;
"food law" has the same meaning as in Regulation (EC) No. 178/2002³;

³ O.J. No. L 31 of 1.2.2002, p 1

"inspector" means an inspector within the meaning of the Diseases of Animals Act 1966 (No. 6 of 1966);
"Member State" means a Member State of the European Communities;
"Minister" means the Minister for Agriculture and Food;
"person" includes agent;
"Regulation (EC) No. 178/2002" means Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002;
"third country" means a State that is not a Member State
(2) A word or expression that is used in these Regulations and is also used in Council Directive 2002/99 has, unless the contrary intention appears, the same meaning in these Regulations as it has in Council Directive 2002/99.

(3) In these Regulations a reference to —
(a) a Regulation is to a Regulation of these Regulations, unless it appears that reference to some other provision is intended,
(b) a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs, unless it appears that reference to some other provision is intended.

Application

3. These Regulations apply to the introduction into the State of products of animal origin, other than fish, from third countries for human consumption.

Introduction

4. A person shall not introduce or attempt to introduce into the State a product of animal origin from a third country, unless, at that time, the product complies —

(a) with the food law of the European Communities, or,
(b) with the food law of the third country from which the product originates where,
Communities, or,
(i) such law is equivalent to the food law of the European
(ii) the European Communities has concluded an agreement in respect of such products with that third country
and the animal product is accompanied by a veterinary certificate in accordance with Article 9 of Council Directive 2002/99 and is presented for a veterinary examination in accordance with the requirements of Council Directive No. 97/78.

Placing on the market

5. A person shall not place on the market or attempt to place on the market a product of animal origin from a third country, unless, at that time, the product complies -

(a) with the food law of the European Communities, or,
(b) with the food law of the third country from which the product originates where,
Communities, or,
(i) such law is equivalent to the food law of the European
(ii) the European Communities has concluded an agreement in respect of such products with that third country
and the animal product has been presented for a veterinary examination in accordance with the requirements of Council Directive No. 97/78.

Possession

6. Without prejudice to the provisions of European Communities (Control on Imports of Animal Products for Personal Consumption Regulations) Regulations 2004 (S.I. No 267 of 2004) a person shall not have in his or her possession without lawful authority a product of animal origin unless the product complies -

(a) with the food law of the European Communities, or,
(b) with the food law of the third country from which the product originates where,
Communities, or,
(iii) such law is equivalent to the food law of the European

(ii) the European Communities has concluded an agreement in respect of such products with that third country and the animal product has been presented for a veterinary examination in accordance with the requirements of Council Directive No. 97/78.

Keeping of records

7. A person who introduces a product of animal origin from a third country shall retain all commercial documents or health certificates relating to such product for a period of at least three years after the product has been introduced.

Appointment of authorised officers

8. (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) An authorised officer shall be furnished with a warrant of appointment and when exercising any power conferred on him or her by these Regulations such officer shall, if requested by any person affected, produce the warrant to that person.

Powers of authorised officers

9. (1) If an authorised officer has reasonable cause to suspect that -

- (a) a product of animal origin is present or has been present on a premises,
- (b) a product of animal origin is or has been produced, processed, stored or otherwise dealt with on a premises,
- (c) the premises has been used, is being used or may be used in relation to the production, processing, distribution and introduction of a product of animal origin or is ancillary to a premises which is either used or may be used in relation to the production, processing, distribution and introduction of a product of animal origin,
- (d) a document relating to a product of animal origin or other thing referred to in paragraph (a), (b) or (c) is present, or
- (e) an offence is being or has been committed under these Regulations,

he or she may enter any premises and may —

- (i) search the premises,
- (ii) board and search any vehicle, vessel or container,
- (iii) examine an animal product, vehicle, vessel, container or other thing that may consist of or contain a product of animal origin,
- (iv) 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,
- (v) seize and detain (for so long as is necessary) any such product of animal origin, vehicle or container,
- (vi) require the production of a relevant document or thing relating to a product of animal origin, vehicle, vessel or container,
- (vii) retain any such document or thing (for so long as is necessary),
- (viii) dispose of, or require the owner or person in charge of or in possession of, a product of animal origin to dispose of it (or any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with, a product of animal origin) in such manner as the authorised officer sees fit,

(ix) give such directions to, or request such information of, a person regarding a product of animal origin, vessel, vehicle, aircraft or container as he or she considers necessary,

(x) require the name and address of a person and the name and address of any other relevant person including the person to whom the product of animal origin is being delivered or who is causing it to be delivered,

(xi) require of the person the ownership, identity and origin of the product of animal origin,

(xii) mark or otherwise identify such product of animal origin or a specimen taken under subparagraph (iv), or

(xiii) require any person present or the owner or person in charge of the product of animal origin and any person employed in connection therewith to give to him or her such information and to produce to him or her such books, certificates, documents or other records within the power of procurement of the person as the officer may reasonably require for the purposes of such functions.

(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 (7) other than if he or she has reasonable cause to suspect that, before a search warrant could be sought in relation to the dwelling, anything to which paragraph (7) relates is being or is likely to be destroyed or disposed.

(3) An authorised officer may use reasonable force, if necessary, in the exercise of his or her powers under this Regulation.

(4) An authorised officer when exercising any powers under this Regulation may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of those powers.

(5) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under this Regulation if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(6) Where a member of the Garda Síochána has reasonable cause to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

(7) 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 a premises, vehicle, vessel or aircraft a product of animal origin,

(b) that there is on a premises, vehicle, vessel or aircraft a document, record or other thing relating to a product of animal origin, or

(a) that there is evidence of a contravention of these Regulations therein or thereon,

the Judge may issue a search warrant.

(8) A search warrant under this Regulation 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 use of reasonable force) the premises, vehicle, vessel or aircraft named in the warrant.

(9) Where a premises, vehicle, vessel or aircraft 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.

Notice

10. (1) Where an authorised officer is of the opinion that -
(a) these Regulations are not being or have not been complied with or there are reasons to believe that they will not be complied with, or
(b) there is a danger to public or animal health
he or she may, by a notice in writing stating that opinion and served on the person who appears to be the owner or the person in control of the product, the master of a vessel or aircraft that was used to introduce a product of animal origin into the State, operator or person in charge of a premises on which the product of animal origin or other thing to which the notice relates —

(i) seize and detain a product of animal origin, vehicle, container or other thing, or
(ii) require him or her to take such action as the authorised officer considers necessary.

(2) A notice under this Regulation may-
(a) require that a product of animal origin be disposed of or destroyed in a manner specified in the notice,

(b) prohibit or regulate any operation or processing on the premises to which the notice relates,

(c) prohibit the transport or, as the case may be, the further transport of a product of animal origin either absolutely or under such conditions as may be specified in the notice are complied with,

(b) require a person to return a product of animal origin (and any thing that is in the same container or consignment as the product of animal origin) to the place of departure or other place by a route (if any) which in the opinion of the authorised officer is the most direct or prudent,

(c) require that such alterations be made to a premises or means of transport as may be specified in the notice, or

(d) require a person to cleanse and disinfect a product of animal origin, vehicle, vessel, premises, container or part thereof.

(3) A person shall comply with a notice under this Regulation or a requirement of a notice unless and until the notice is annulled under paragraph (8).

(4) A requirement contained in a notice under this Regulation may specify a time limit within which it is to be complied with.

(5) A requirement specified in a notice under this Regulation (in this paragraph referred to as "the earlier notice") may be modified or withdrawn in a further notice and the earlier notice shall have effect subject to the modification or withdrawal.

(6) A notice under this Regulation may require the person in control of a product of animal origin, premises, means of transport or other thing to choose between two or more of the requirements specified in the notice.

(7) (a) A person affected by a notice under this Regulation may, within 7 days of the service of the notice, apply to the Judge of the District Court having jurisdiction in the District Court District where a product of animal origin is situated or to the Judge of the District Court having jurisdiction in the District Court District where the person bringing the appeal ordinarily resides or carries on business on the grounds that the notice or any of the terms thereof are not justified having regard to this Order (in this Regulation referred to as "an appeal"),

(b) An appeal may be heard at any sitting of the District Court within the appropriate District Court District,

(c) Notice of an appeal shall contain a statement of the grounds upon which it is alleged that the notice or any of the terms thereof are not justified and shall be served on the Minister at least 48 hours prior to the hearing of the appeal,

(d) A copy of the notice of appeal shall be lodged with the District Court Clerk at least 48 hours prior to the hearing of the appeal, and

(e) The Minister shall, as well as the appellant, be entitled to be heard and to adduce evidence at the hearing of an appeal under this Regulation.

(8) On the hearing of an appeal a Judge of the District Court may confirm, modify or annul a notice.

(9) A person, including a person on whom a notice under this Regulation has been served, shall not -

(a) pending the determination of an appeal, deal with a product of animal origin, premises, means of transport or other thing to which the notice relates, other than in accordance with the terms of the notice, or

(b) after such appeal, deal with a product of animal origin, premises, means of transport or other thing concerned other than in accordance with the notice or notice as modified.

(10) (a) Where-

(i) the person in control of a product of animal origin, premises, means of transport or other thing fails to comply with the terms of a notice under this Regulation within the time specified therein,

(ii) an authorised officer has reasonable grounds for believing that the terms of a notice under this Regulation will not be complied with,

(iii) a notice under this Regulation has been confirmed with or without modification under paragraph (8) and the notice has not been complied with,

(iv) an authorised officer has reasonable grounds for believing that the terms of a notice under this Regulation which has been confirmed with or without modification under paragraph (8) will not be complied with, or

(v) pending the determination of an appeal, an authorised officer has reasonable grounds for believing that directions given pursuant to paragraph (9) have not been or shall not be complied with,

an authorised officer may at any time seize the product of animal origin, premises, means of transport or other thing concerned.

(b) Where a product of animal origin, premises, means of transport or other thing is seized in accordance with subparagraph (a), an authorised officer may-

(i) sell, destroy or dispose of the product of animal origin or other thing or cause it to be sold, destroyed or be disposed of, or

(ii) take such other measures in relation to the product of animal origin, premises, means of transport or other thing as the authorised officer considers appropriate in the circumstances of the case.

(c) Any profits arising out of the sale, destruction or disposal of a product of animal origin or other thing in accordance with subparagraph (b) shall be paid to the owner of the product of animal origin or other thing less any expenses incurred in connection with the seizure, sale, destruction or disposal.

(11) The costs of a measure taken under this Regulation is recoverable by the Minister —

(a) as a simple contract debt in a court of competent jurisdiction from the person who was the owner of the product of animal origin or means of transport at the time the measure was carried out, or

(b) by deducting the costs from any sum due by the Minister to a person on whom a notice has been served.

Forgery

11. (1) A person shall not forge or utter knowing it to be forged a record (hereafter in this Regulation referred to as "a forged document").

(2) A person shall not alter with intent to defraud or deceive, or utter knowing it to be so altered a notice under Regulation 10 (hereafter in this Regulation referred to as "an altered document").

(3) A person shall not have, without lawful authority, in his or her possession or under his or her control a forged document or an altered document.

Service

12. (1) A notice under Regulation 10 shall, subject to paragraph (2), be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways —

(a) by delivering it to the person,

(b) 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,

(c) 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

(d) 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.

(2) Where a notice under Regulation 10 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 or, as the case may require, the occupier.

(3) A person shall not at any time within 6 months after notice under Regulation 10 is affixed under paragraph (1)(d) remove, damage or deface the notice without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Acts 1963 to 2001, 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.

Offences

13. (1) A person who contravenes these Regulations or obstructs or impedes an authorised officer in the exercise of his or her powers is guilty of an offence and is liable, on conviction, to a fine not exceeding €3,000 or to a term of imprisonment not exceeding 6 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 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, is guilty of an offence and liable to be proceeded against and punished as if guilty of the first-mentioned offence.

(4) Where the affairs of a body corporate or unincorporated body are managed by its members, paragraph (2) applies in relation to the acts and defaults of a member in connection with functions of management as if such a member were a director or manager of the body corporate.

On the Spot Fines

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

(a) the 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 shall issue a receipt for a payment received under subparagraph (a) 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.

Other legislation

15. These Regulations are in addition to and not in substitution for —

(a) the European Communities (Veterinary Checks on Animal Products Imported from Third Countries) Regulations 2000 (S.I. No. 292 of 2000), and,
(b) the European Communities (Trade in the Production, Processing, Distribution and Introduction of Products of Animal Origin for Human Consumption) Regulations 2004 (S.I. No. 820 of 2004).

(L.S.)

Given under my Official Seal,
22nd 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 implement Council Directive 2002/99 of 16 December 2002 laying down the animal health rules governing the importation of products of animal origin from third countries for human consumption. They also provide for the appointment of authorised officers to implement the Regulations and for prosecution of offences.

Published by the Government Supplies Agency, Dublin.