

S.I. No. 483/2002 — European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2002

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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 Directive No. 2000/13/EC of the European Parliament and of the Council of 20 March 2000¹ , Commission Directive No.87/250/EEC of 15 April 1987² , Commission Directive No. 94/54/EC of 18 November 1994³ (as amended by Council Directive No. 96/21/EC of 29 March 1996⁴) and Commission Directive No. 1999/10/EC of 8 March 1999⁵ , hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2002.

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) a person appointed under Regulation 15(1), or
- (b) an officer of a health board appointed under Regulation 15(2),

“Directive” means Directive No. 2000/13/EC of the European Parliament and of the Council of 20 March 2000;

“Directives” means Directive No. 2000/13/EC of the European

Parliament and of the Council of 20 March 2000, Commission Directive No. 87/250/EEC of 15 April 1987, Commission Directive No. 94/54/EC of 18 November 1994 (as amended by Council Directive No. 96/21/EC of 29 March 1996) and Commission Directive No. 1999/10/EC of 8 March 1999;

“health board” means -

- (a) a health board established under section 4 of the Health Act 1970 (No. 1 of 1970), or
- (b) the Eastern Regional Health Authority, the Northern Area Health Board, the East Coast Area Health Board or the South-Western Area Health Board;

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

(2) A reference in any enactment or an instrument made under an enactment to Council Directive No. 79/112/EEC of 18 December 1978⁶ (as amended by the Directives referred to in Annex IV, Part A to the Directive), or to any provision of that Council Directive shall be construed as a reference to the Directive or to the corresponding provision thereof in accordance with the correlation table set out in Annex V to the Directive.

(3) In these Regulations -

- (a) a reference to a Regulation is to a Regulation of these Regulations, unless it is indicated that a reference to some other enactment is intended, and
- (b) a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that a reference to some other provision is intended.

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

3. The Orders specified in the Schedule to these Regulations, insofar 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) is guilty of an offence.

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

- (a) (i) 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 the person, or
- (ii) flour confectionery prepackaged for sale on premises where business is carried on by the person by whom the foodstuffs are produced,
- (b) any foodstuffs where the sale is a sale to the ultimate consumer or mass caterer without prepackaging, or
- (c) 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).

- (2) (a) Where foodstuffs specified in paragraph (1)(a) are sold, they shall bear indications of the names of the foodstuffs on the labelling complying with the Directives.
- (b) Where foodstuffs specified in paragraph (1)(b) and (c) 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 in the notice 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 of the foodstuffs and is not hidden or obscured.
- (4) (a) Subject to subparagraph (b), 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) 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 manufacturers, packers or sellers of the

foodstuffs.

- (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) is guilty of an offence.
6. (1) Where prepackaged prepared meals or prepackaged sandwiches, filled rolls or similar bread products are sold -
 - (a) they shall bear indications on the labelling complying with the Directives of the names of the foodstuffs, or
 - (b) 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) is guilty of an offence.
7. Notwithstanding anything in the Directives, Articles 3.1(4) and 8 of the Directive 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 the Directive relating to the giving of particulars provided for in Article 3 of the Directive shall, by virtue of the first paragraph of Article 13.5 of the Directive, be deemed to be complied with if subparagraphs (1), (4), (5) and (7) (in so far as that subparagraph relates to the indication of the name or business name of the manufacturer, packager or seller of foodstuffs) of Article 3.1 of the Directive 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 -
 - (a) Council Directive No. 89/107/EEC of 21 December 1988⁷, and
 - (b) European Parliament and Council Directive No. 95/2/EC of 20 February 1995⁸ (as amended by Directive No. 96/85/EC of the European Parliament and of the Council of 19 December 1996⁹ and Directive No. 98/72/EC of the European Parliament and of the Council of 15 October 1998¹⁰),shall be in accordance with Commission Directive No. 94/54/EC of 18 November 1994.
- (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).

- (3) A person who fails to comply with paragraph (2) is guilty of an offence.
10.
 - (1) Without prejudice to Article 3 of the Directive, the labelling of foodstuffs listed in Article 1 of Council Directive No. 96/21/EC of 29 March 1996 shall include additional particulars as set out in the said Article 1.
 - (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).
 - (3) A person who fails to comply with paragraph (2) is guilty of an offence.
11. Notwithstanding anything in the Directive, Article 3.1(7) shall, in the case of butter produced in the State, be deemed to be complied with if an indication is given in accordance with the Directive of the manufacturer, packager or seller of the butter.
12. European Parliament and Council Directive No. 95/2/EC of 20 February 1995, European Parliament and Council Directive No. 94/35/EC of 30 June 1994¹¹ (as amended by European Parliament and Council Directive No. 96/83/EC of 19 December 1996¹²), and European Parliament and Council Directive No. 94/36/EC of 30 June 1994¹³ shall apply to the designation of ingredients in accordance with the second indent of Article 6.6 of the Directive.
13.
 - (1) The requirement in Article 8.2(d) of the Directive in relation to the I indication of the total number of individual packages in a prepackaged item consisting of 2 or more individual packages shall not apply in relation to prepackaged items consisting of 2 or more individually wrapped slices of cheese or 2 or more individually wrapped pieces of sugar confectionery, being items which are not intended to be units of sale.
 - (2) Article 8.1 of the Directive 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.
 - (3) An indication of alcoholic strength in the labelling of beverages referred to in the second paragraph of Article 12 of the Directive shall be in accordance with Commission Directive 87/250/EEC of 15 April 1987.
 - (4) A person who fails to comply with paragraph (3) is guilty of an offence.
14.
 - (1) Indication of particulars on the labelling or advertising of foodstuffs in pursuance of the Directive and these Regulations shall be at least in the English language or in the Irish language and in the English language.
 - (2) A person who fails to comply with paragraph (1) is guilty of an offence.
15.
 - (1) The Director of Consumer Affairs may appoint in writing any person being a whole-time officer of the Minister for Enterprise, Trade and Employment to be an authorised officer for the purposes of these Regulations.
 - (2) The chief executive officer of a health board may, in relation to the functional area of that health board, appoint in writing such one or more officers of the health board, as he or she considers appropriate, to be an authorised officer or authorised officers for the purposes of these

Regulations.

16. (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 of the warrant to that person.
- (2) For the purposes of ensuring compliance with these Regulations and the Directives an authorised officer may -
- (a) at all reasonable times, enter and inspect any premises in which the authorised officer 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 the authorised officer 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 of the premises to give to the authorised officer such information in the person's power or control that the officer may reasonably require and to produce to the officer 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 authorised 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 the authorised officer 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 the authorised officer 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 4 approximately equal parts each of which the officer 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 4 lots each of which the officer shall mark in such a way as to identify it as a part of the sample taken by the officer.
 - (c) In proceedings 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 -
 - (a) obstructs or interferes with an authorised officer in the exercise of his or her powers under this Regulation, or
 - (b) without reasonable excuse, does not comply with a requirement of an authorised officer under this Regulation, or
 - (c) in purported compliance with a requirement referred to in paragraph (b), gives information to an authorised officer that the person knows to be false or misleading in a material respect,is guilty of an offence.
- (5) An authorised officer shall not, other than with the consent of the occupier, enter a private dwelling unless the officer has obtained a warrant from the District Court under Regulation 17 authorising such entry.
- (6) An authorised officer, where he or she considers it necessary, may require a member of the Garda Síochána to assist the officer 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 2000 (S.I. No. 92 of 2000), 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.

17. 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 16.

18. If any person fraudulently -

- (a) tampers with any foodstuff so as to procure that any sample of it taken under Regulation 16 does not correctly represent the product, or
- (b) tampers or interferes with any sample taken under Regulation 16,
- the person is guilty of an offence.

19. (1) An offence under these Regulations may be prosecuted by -

- (a) the Director of Consumer Affairs, or
- (b) a health board, in whose functional area the offence was committed.

(2) A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding €3,000 or to imprisonment for a term not exceeding 3 months or to both such fine and imprisonment.

20. (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) 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,
- (b) 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,

- (c) that the foodstuffs, when disposed of by him or her were in the same state as when he or she received them, and
 - (d) 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) to be a warranty.
- (b) A statement of the kind referred to in subparagraph (a) 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) 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.

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

22. The European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations 2000 (S.I. No. 92 of 2000) are hereby revoked.

SCHEDULE

Orders

Number and Year	Title
(1)	(2)
S.I. No. 28 of 1973	Merchandise Marks (Prepacked Goods) (Marking and Quantities) Order 1973
S.I. No. 267 of 1973	Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order 1973
S.I. No. 222 of 1979	Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment)

	Order 1979
S.I. No. 394 of 1981	Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order 1981
S.I. No. 367 of 1983	Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order 1983
S.I. No. 295 of 1985	Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order 1985
S.I. No. 100 of 1986	Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order 1986
S.I. No. 284 of 1989	Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order 1989
S.I. No. 266 of 1990	Merchandise Marks (Prepacked Goods) (Marking and Quantities) (Amendment) Order 1990

GIVEN under my Official Seal,

16 October 2002.



Mary Harney

Minister for Enterprise, Trade
and Employment.

EXPLANATORY NOTE

These Consolidated Regulations transpose Directive 2000/13 on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs which revoked the previous Directive 79/112/EEC as amended and revoke the consolidated Regulations the European Communities (Labelling, Presentation and Advertising of Foodstuffs) Regulations S.I. No. 92 of 2000 . The Consolidated Directive brings into one Directive all the requirements of the original Directive as amended. The Regulations also provide for increased fines of €3,000.

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- ¹ OJ No. L109, 6.5.2000, p. 29
- ² OJ No. L113, 30.4.87, p. 57
- ³ OJ No. L300, 23.11.94, p. 14
- ⁴ OJ No. L88, 5.4.96, p. 5
- ⁵ OJ No. L69, 16.3.99, p. 22
- ⁶ OJ No. L33, 8.2.79, p.1
- ⁷ OJ No. L40, 11.2.89, p.27
- ⁸ OJ No. L61, 18.3.95, p.1
- ⁹ OJ No. L86, 28.3.97, p.4
- ¹⁰ OJ No. L295, 4.11.98, p.18
- ¹¹ OJ No. L237, 10.9.94, p.3
- ¹² OJ No. L48, 19.2.97, p.16
- ¹³ OJ No. L237, 10.9.94, p.13

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