

S.I. No. 412/2006 — European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) (No. 2) Regulations 2006

S.I. No. 412 of 2006

European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) (No. 2) Regulations 2006

I, Mary Harney, Minister for Health and Children, 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 Commission Directive 2001/22/EC¹ of 8 March 2001 laying down the sampling methods and the methods of analysis for the official control of the levels of lead, cadmium, mercury and 3-MCPD in foodstuffs as amended by Commission Directive 2005/4/EC² of 19 January 2005, Commission Directive 2002/69/EC³ of 30 July 2002 laying down the sampling methods and the methods of analysis for the official control of dioxins and the determination of dioxin-like PCBs in foodstuffs as amended by Commission Directive 2004/44/EC⁴ of 13 April 2004, Commission Directive 2004/16/EC⁵ of 12 February 2004 laying down the sampling methods and the methods of analysis for the official control of the levels of tin in canned foods and Commission Directive 2005/10/EC⁶ of 4 February 2005 laying down the sampling methods and the methods of analysis for the official control of the levels of benzo(a)pyrene in foodstuffs, and for the purpose of giving full effect to Commission Regulation (EC) No. 401/2006⁷ of 23 February 2006 laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs, hereby make the following regulations:

PART 1

Preliminary

1. These Regulations may be cited as the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) (No. 2) Regulations 2006.
2. (1) In these Regulations:

“Act of 1998” means the Food Safety Authority of Ireland Act 1998 (No. 29 of 1998);

“approved examiner” means:

- (a) a Deputy Public Analyst located at a Public Analyst's Laboratory,
- (b) a Public Analyst located at a Public Analyst's Laboratory,
- (c) a Senior Chemist in the State Laboratory,
- (d) an Executive Analytical Chemist located at a Public Analyst's Laboratory,
- (e) the Senior Chemist in the Institute,
- (f) the State Chemist in the State Laboratory, or
- (g) a person or class of persons designated by the Minister pursuant to Regulation 17;

“authorised officer” means:

- (a) an authorised officer appointed under section 49 of the Act of 1998,
- (b) a person appointed by the Minister for Agriculture and Food to be an authorised officer for the purposes of these Regulations,
- (c) a person appointed by the Minister for Communications, Marine and Natural Resources to be an authorised officer for the purposes of these Regulations,
- (d) a person appointed as an authorised officer under the European Communities (Sampling Methods and the Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2001 (S.I. No. 401 of 2001), or under the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2003 (S.I. No. 267 of 2003), or under the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2005 (S.I. No. 68 of 2005), or under the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) (No. 2) Regulations 2005 (S.I. No. 368 of 2005), and appointed as an authorised officer under the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) (No. 2) Regulations 2005 immediately before the coming into operation of the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2006 (S.I. No. 144 of

2006), or

- (e) a person appointed as an authorised officer under the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2006, and appointed as an authorised officer immediately before the coming into operation of these Regulations;

“Authority” means the Food Safety Authority of Ireland, established under section 9 of the Act of 1998;

“Directives” means Commission Directive 2001/22/EC¹ of 8 March 2001 as amended by Commission Directive 2005/4/EC² of 19 January 2005, Commission Directive 2002/69/EC³ of 30 July 2002 as amended by Commission Directive 2004/44/EC⁴ of 13 April 2004, Commission Directive 2004/16/EC⁵ of 12 February 2004 and Commission Directive 2005/10/EC⁶ of 4 February 2005;

“EC Instruments” means the Directives and the EC Regulation;

“EC Regulation” means Commission Regulation (EC) No. 401/2006⁷ of 23 February 2006 laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs;

“General Food Law Regulation” referred to at paragraph (2) means Regulation (EC) No. 178/2002⁸ of the European Parliament and of the Council of 28 January 2002, laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety;

“Institute” means the Marine Institute, established under section 3 of the Marine Institute Act 1991 (No. 2 of 1991);

“Minister” means the Minister for Health and Children;

“official agency” means an official agency carrying out functions under a service contract and acting on behalf of the Authority pursuant to section 48 of the Act of 1998;

“Official Controls Regulation” means Regulation (EC) No. 882/2004⁹ of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules;

“official laboratory” means:

- (a) the Institute
- (b) the Public Analyst's Laboratory, Cork,

- (c) the Public Analyst's Laboratory, Dublin,
- (d) the Public Analyst's Laboratory, Galway,
- (e) the State Laboratory,
- (f) a laboratory designated by the Minister pursuant to Regulation 17;

“service contract” means a contract entered into between the Authority and an official agency pursuant to section 48 of the Act of 1998.

- (2) A word or expression which is used in these Regulations and which is also used in the EC instruments or in the General Food Law Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in the EC instruments or in the General Food Law Regulation.
- (3)
 - (a) A reference in these Regulations to a Regulation is to a Regulation of these Regulations, unless it is indicated that reference to some other Regulations is intended.
 - (b) A reference in these Regulations to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.
 - (c) A reference in these Regulations to a Schedule is to a Schedule to these Regulations, unless it is indicated that reference to some other Regulations is intended.

PART 2

General Provisions

- 3.
 - (1) Sampling for the official control of the levels of lead, cadmium, mercury and 3-MCPD in foodstuffs shall be carried out in accordance with the methods described in Annex I to Commission Directive 2001/22/EC¹ as amended by Commission Directive 2005/4/EC².
 - (2) Sample preparation and methods of analysis used for the official control of the levels of lead, cadmium, mercury and 3-MCPD in foodstuffs shall comply with the criteria described in Annex II to Commission Directive 2001/22/EC¹ as amended by Commission Directive 2005/4/EC².
- 4.
 - (1) Sampling for the official control of the levels of dioxins and furans and the determination of the levels of dioxin-like PCBs in foodstuffs shall be carried out in accordance with the methods described in Annex I to Commission Directive 2002/69/EC³ as amended by Commission Directive 2004/44/EC⁴.

- (2) Sample preparation and methods of analysis used for the official control of the levels of dioxins and furans and the determination of the levels of dioxin-like PCBs in foodstuffs shall comply with the criteria described in Annex II to Commission Directive 2002/69/EC³ as amended by Commission Directive 2004/44/EC⁴.
5.
 - (1) Sampling for the official control of the levels of tin in foodstuffs shall be carried out in accordance with the methods described in Annex I to Commission Directive 2004/16/EC⁵.
 - (2) Sample preparation and methods of analysis used for the official control of the levels of tin in foodstuffs shall comply with the criteria described in Annex II to Commission Directive 2004/16/EC⁵.
6.
 - (1) Sampling for the official control of the levels of benzo(a)pyrene in foodstuffs shall be carried out in accordance with the methods described in Annex I to Commission Directive 2005/10/EC⁶.
 - (2) Sample preparation and methods of analysis used for the official control of the levels of benzo(a)pyrene in foodstuffs shall comply with the criteria described in Annex II to Commission Directive 2005/10/EC⁶.
7.
 - (1) Sampling for the official control of the levels of mycotoxins in foodstuffs shall be carried out in accordance with the methods described in Annex I to the EC Regulation.
 - (2) Sample preparation and methods of analysis used for the official control of the levels of mycotoxins in foodstuffs shall comply with the criteria described in Annex II to the EC Regulation.

PART 3

Enforcement

8. The enforcement of these Regulations and of the EC instruments shall be carried out in accordance with the provisions of these Regulations and with the provisions of the EC instruments.
9. These Regulations shall be deemed to be food legislation for the purposes of the Act of 1998.
10. These Regulations shall be enforced by the Authority or by an official agency pursuant to a service contract with the Authority and, without prejudice to Regulation 8, the enforcement provisions contained in the Act of 1998 shall apply for the purposes of ensuring compliance with these Regulations.
11.
 - (1) An authorised officer may purchase or take without payment a sample of any foodstuff.
 - (2) An authorised officer may exercise such other powers as may be reasonably necessary to ensure that these Regulations are being complied with.
12. For the purposes of these Regulations, sampling shall be carried out by an authorised officer and analysis shall be carried out by an approved examiner, or by a person acting under his or her direction, in an official laboratory.
13. Where an authorised officer purchases or takes without payment a sample of any

foodstuff with the intention of having it analysed:

- (a) he or she shall notify the owner or person in apparent charge or control of such foodstuffs forthwith of his or her intention of having the sample analysed;
 - (b) the authorised officer shall, in the presence of the owner or person in apparent charge or control of such foodstuffs, mark, seal and fasten the sample in such a manner as its nature will permit and in such a way that the integrity of the sample is not compromised and forward it to an approved examiner in an official laboratory for analysis;
 - (c) as soon as is reasonably practicable after he or she has received such a sample, the approved examiner or a person acting under his or her direction shall issue to the owner or person in apparent charge or control of the foodstuff, a certificate in the form set out in Schedule 2, or a certificate in like form, confirming that the integrity of the sample had been preserved;
 - (d) the approved examiner or a person acting under his or her direction shall prepare and sub-divide the sample in accordance with Regulations 3, 4, 5, 6 or 7, as appropriate;
 - (e) the enforcement sample, the trade (defence) sample and the referee sample shall be marked in such a way as to identify them as a part of the sample taken by the authorised officer and the trade (defence) sample shall be forwarded to the owner or person in apparent charge or control of the foodstuff in such a way that the integrity of the sample is not compromised.
14. Authorised officers and the approved examiners shall take all reasonable steps to ensure that samples taken under these Regulations, and all sub-samples derived from such samples, are stored and transported in conditions that offer adequate protection from contamination and avoid any change in composition of the sample, which might arise during transportation or storage.
15.
 - (1) The approved examiner, or a person acting under his or her direction, shall analyse as soon as possible a sub-sample of the sample submitted to him or her in pursuance of these Regulations and the approved examiner shall certify to the person who submitted the sample to him or her the result of such analysis.
 - (2) After the sub-sample has been analysed by the approved examiner, or a person acting under his or her direction, a certificate in the form set out in Schedule 1, or a certificate in like form, shall be completed.
 - (3) An official certificate given in accordance with this Regulation may be adduced in evidence in a prosecution and shall be *prima facie* evidence of the matters contained therein, until the contrary is proved.
16. Where a sample of a foodstuff is taken by an authorised officer in pursuance of these Regulations for analysis by an approved examiner, and where the certificate given in accordance with Regulation 15 indicates that there has been non-compliance with food law, the Authority or the official agency, as the case may be, shall draw up a report in accordance with Article 9 of the Official Controls Regulation, and shall provide the owner or person in apparent charge

or control of the foodstuff with a copy of the report.

17. The Minister may, for the purposes of these Regulations designate, by notice in writing published in *Iris Oifigiúil* -
 - (a) a laboratory as a laboratory at which samples taken under these Regulations may be analysed, and
 - (b) a person as being a person who, or a class of persons the members of which, may, at a designated laboratory, engage in analysis for the purposes of these Regulations and complete certificates in the form set out in Schedule 1 and Schedule 2.
18. A person who -
 - (a) obstructs or interferes with an authorised officer in the exercise of the officer's powers under these Regulations,
 - (b) fails or refuses to state his or her name or address in compliance with a requirement under these Regulations,
 - (c) fails to comply with a request from an authorised officer under these Regulations,
 - (d) makes a statement to an authorised officer which the person knows is false or misleading, or
 - (e) gives in purported compliance with a requirement under these Regulations a name, an address or corroborative evidence which is false or misleading

is guilty of an offence.
19.
 - (1) Any person who forges, or utters knowing it to be forged, a certificate or other document purporting to be issued, granted or given under these Regulations (hereafter in this Regulation referred to as “a forged document”), is guilty of an offence.
 - (2) Any person who alters with intent to defraud or deceive, or who utters knowing it to be so altered, a certificate or other document issued, granted or given under these Regulations (hereafter in this Regulation referred to as “an altered document”), is guilty of an offence.
 - (3) Any person who, without lawful authority, has in his or her possession a forged document or an altered document is guilty of an offence.
 - (4) Any person who, with intent to defraud or deceive -
 - (a) tampers with any thing so as to purport that any sample taken pursuant to these Regulations does not correctly represent the substance sampled, or
 - (b) tampers or interferes with any sample taken under these

Regulations

- is guilty of an offence.
20. A person who is guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding €5,000 or, at the discretion of the court, to imprisonment for a term not exceeding 6 months, or both.
21. Where an offence under these Regulations is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to be attributed to any neglect or default on the part of, any director, manager, secretary or any other officer of such body, or a person who was purporting to act in any such capacity, such person is also guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.
22. An offence under these Regulations may be prosecuted by -
- (a) the Authority, or
 - (b) an official agency.

PART 4

Revocation

23. (1) The European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2006 (S.I. 144 of 2006) are revoked.
- (2) References in any other instrument to the Regulations revoked under paragraph (1) shall be construed as references to these Regulations, as appropriate.

Schedule 1

Form of official certificate to be given by an approved examiner to an authorised officer.

European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) (No. 2) Regulations 2006

Certificate of Analysis

To ⁽¹⁾.....

I, the undersigned ⁽²⁾.....

being an Approved Examiner for the purpose of the above Regulations certify that on

theday of 20.....

a sample marked ⁽³⁾

Date

Number

Weight or Measure ⁽⁴⁾

was submitted to me by you and I certify that the sample was prepared and analysed/examined by me or under my direction and as a result I am of the opinion that ⁽⁵⁾

Observations:⁽⁶⁾

I further certify that the sample has undergone no change which would affect my opinion/observations expressed above.

Certified by me thisday of 20.....

at ⁽⁷⁾

Name in BLOCK LETTERS

Status

Signature

Official Stamp

NOTES

(1) Insert the name and address of the person submitting the sample for analysis.

- (2) Insert description (e.g. Senior Chemist in the Institute).
- (3) Insert particulars of marking (e.g. name, date etc.).
- (4) This may be left unanswered if the sample cannot be conveniently weighed or measured or the weight or measurement is not material to the result of analysis.
- (5) Here the approved examiner should specify the result of the analysis having regard to the provisions of relevant legislation.
- (6) Here the approved examiner may insert, at his or her discretion, his or her opinion whether the analysis indicates any addition, abstraction, deficiency or the presence of foreign matter or other defect and whether the composition or quality is thereby affected; any physical, chemical or other properties bearing on the composition or quality of the article; whether the article is injurious to health or unfit for human consumption; whether and in what respect a label and description relating to the sample is incorrect or misleading; and he or she may add any other observations as he or she may consider relevant.
- (7) Insert the name and address of the laboratory carrying out the analysis/examination.

Schedule 2

Form of official certificate to be issued by an approved examiner, or by a person acting under his or her direction, to the owner or person in apparent charge or control of a foodstuff in respect of which a sample was taken pursuant to these Regulations

European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) (No. 2) Regulations 2006

Certificate of Integrity of Sample

To ⁽¹⁾

I, the undersigned ⁽²⁾

being an Approved Examiner for the purposes of the above Regulations, or a person acting under the direction of an Approved Examiner⁽³⁾, certify that on

theday of 20.....

a sample marked ⁽⁴⁾

Date

Numbers

Weight or Measure ⁽⁵⁾

was submitted to me by an authorised officer⁽⁶⁾ and I certify that the seal has not been tampered with and that it was delivered to this laboratory with its integrity preserved.

Certified by me this day of 20.....

at ⁽⁷⁾

Name in BLOCK LETTERS

Status

Signature

Official Stamp

NOTES

- (1) Insert the name and address of the owner or person in apparent charge or control of the foodstuff.
- (2) Insert description (e.g. Senior Chemist in the Institute).
- (3) Delete as appropriate.
- (4) Insert particulars of marking (e.g. name, date etc.).
- (5) This may be left unanswered if the sample cannot be conveniently weighed or measured.
- (6) Insert the name of the authorised officer who submitted the sample.
- (7) Insert the name and address of the laboratory carrying out the

analysis/examination.

Given under my Official Seal this
2nd August, 2006.

Mary Harney,
Minister for Health and Children

Explanatory Note

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

These Regulations give further effect to Commission Directive 2001/22/EC of 8 March 2001 laying down the sampling methods and the methods of analysis for the official control of the levels of lead, cadmium, mercury and 3-MCPD in foodstuffs as amended by Commission Directive 2005/4/EC of 19 January 2005, Commission Directive 2002/69/EC of 30 July 2002 laying down the sampling methods and the methods of analysis for the official control of dioxins and the determination of dioxin-like PCBs in foodstuffs as amended by Commission Directive 2004/44/EC of 13 April 2004, Commission Directive 2004/16/EC of 12 February 2004 laying down the sampling methods and the methods of analysis for the official control of the levels of tin in canned foods and Commission Directive 2005/10/EC of 4 February 2005 laying down the sampling methods and the methods of analysis for the official control of the levels of benzo(a)pyrene in foodstuffs. These Directives were previously transposed by the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2006 (S.I. No. 144 of 2006).

These Regulations also give full effect to Commission Regulation (EC) No. 401/2006 of 23 February 2006 laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs.

The principal effect of these Regulations is to provide for the methods of sampling, and for the sample preparation and methods of analysis for the official control of the levels of certain contaminants in foodstuffs in accordance with the methods described in the Annexes to the Directives and the EC Regulation.

These Regulations may be cited as the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) (No. 2) Regulations 2006.

DEPARTMENT OF HEALTH AND CHILDREN.

August, 2006

¹ OJ L 77, 16.3.2001, p. 14.

² OJ L 19, 21.1.2005, p. 50.

³ OJ L 209, 6.8.2002, p. 5.

⁴ OJ L 113, 20.4.2004, p. 17.

⁵ OJ L 42, 13.2.2004, p. 16.

⁶ OJ L 34, 8.2.2005, p. 15.

⁷ OJ L 70, 9.3.2006, p. 12.

¹ OJ L 77, 16.3.2001, p. 14.

² OJ L 19, 21.1.2005, p. 50.

³ OJ L 209, 6.8.2002, p. 5.

⁴ OJ L 113, 20.4.2004, p. 17.

⁵ OJ L 42, 13.2.2004, p. 16.

⁶ OJ L 34, 8.2.2005, p. 15.

⁷ OJ L 70, 9.3.2006, p. 12.

⁸ OJ L 31, 1.2.2002, p. 1.

⁹ OJ L 165, 30.4.2004, p. 1, as affected by Corrigendum to Regulation (EC) No. 882/2004, OJ L 191, 28.5.2004, p. 1.