

# **S.I. No. 391/2010 — European Communities (Official Controls on the Import of Food of Non-Animal Origin) Regulations 2010.**

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*“Iris Oifigiúil” of 10th August, 2010.*

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 Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004<sup>1</sup> on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, as affected by the Corrigendum to Regulation (EC) No. 882/2004 of 28 May 2004<sup>2</sup> and as amended by Council Regulation (EC) No. 301/2008 of 17 March 2008<sup>3</sup> and Commission Regulation (EC) No. 1029/2008 of 20 October 2008<sup>4</sup>, and for the purpose of giving further effect to Commission Regulation (EC) No. 669/2009 of 24 July 2009<sup>5</sup> implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC, as amended by Commission Regulation (EU) No. 212/2010 of 12 March 2010<sup>6</sup>, hereby make the following regulations:

## **PART 1 INTERPRETATION**

1. These Regulations may be cited as the European Communities (Official Controls on the Import of Food of Non-Animal Origin) Regulations 2010.

2. (1) In these Regulations—

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

“authorised officer” means an authorised officer appointed under section 49 of the Act of 1998;

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

“common entry document (CED)” means the document to be completed by the food business operator or its representative as provided for in Article 6 of EC Regulation 669/2009, a model of which is set out in Annex II to EC Regulation 669/2009, and by the competent authority confirming completion of official controls, completed in English;

“consignment” means a quantity of food of non-animal origin of the same class or

description, covered by the same document(s), conveyed by the same means of transport and coming from the same third country or part of such third country;

“designated point of entry (DPE)” means a particular point of entry designated by the State pursuant to Article 17 of EC Regulation 882/2004, and listed on the website [www.fsai.ie](http://www.fsai.ie) for the purposes of importation of a product listed in Annex I to EC Regulation 669/2009; in cases of consignments arriving by sea, which are unloaded at a port in the State for the purposes of being loaded on another vessel for onwards transportation to a port in another Member State of the European Union, the designated point of entry shall be the latter port;

“EC Regulation 882/2004” means Commission Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004<sup>1</sup> on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules, as affected by the Corrigendum to Regulation (EC) No. 882/2004 of 28 May 2004<sup>2</sup> and as amended by Council Regulation (EC) No. 301/2008 of 17 March 2008<sup>3</sup> and Commission Regulation (EC) No. 1029/2008 of 20 October 2008<sup>4</sup>;

“EC Regulation 669/2009” means Commission Regulation (EC) No. 669/2009 of 24 July 2009<sup>5</sup> implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC, as amended by Commission Regulation (EU) No. 212/2010 of 12 March 2010<sup>6</sup>;

“EC Regulations” means EC Regulation 882/2004 and EC Regulation 669/2009;

“food legislation” means—

(a) the Acts (including any instruments made thereunder) specified in Part I of the First Schedule to the Act of 1998 insofar as they relate to food safety and hygiene,

(b) the statutory instruments specified in Part II of the First Schedule to the Act of 1998 insofar as they relate to food safety and hygiene,

(c) the Regulations of an institution of the European Communities specified in Part III of the First Schedule to the Act of 1998 insofar as they relate to food safety and hygiene,

(d) any Act passed by the Oireachtas or any statutory instrument made thereunder or regulation made under the European Communities Act 1972 and deemed to be food legislation for the purposes of the Act of 1998;

“General Food Law Regulation” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002<sup>7</sup> 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;

“Health Service Executive” (HSE) means the Health Service Executive, established under section 6 of the Health Act 2004 (No. 42 of 2004);

“official agency” means the Health Service Executive, carrying out functions under these Regulations and the EC Regulations pursuant to section 48 of the Act of 1998;

“official detention” has the meaning assigned to it by Article 2(13) of EC Regulation 882/2004.

(2) A word or expression which is used in these Regulations and which is also used in the EC Regulations or in the General Food Law Regulations has, unless the context otherwise requires, the same meaning in these Regulations as it has in the EC Regulations 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 an Article is to an Article of the EC Regulations, unless it is indicated that reference to some other instrument is intended.

(4) These Regulations shall not apply to food businesses engaged in activities which are subject to the European Communities (Food and Feed Hygiene) Regulations 2009 ( S.I. No. 432 of 2009 ), only to the extent that the food business engages in those activities.

3. These Regulations shall be deemed to be food legislation for the purposes of the Act of 1998.

## PART 2 GENERAL PROVISIONS

4. (1) The competent authority for the purposes of Chapter V of Title II of EC Regulation 882/2004 shall be the Authority or the official agency, as appropriate.

(2) The competent authority for the purposes of EC Regulation 669/2009 shall be the Authority or the official agency, as appropriate.

(3) For the purposes of enabling them to fulfil the obligations placed upon them by the EC Regulations, the Authority and the official agency may exchange among themselves, or provide to any other bodies designated in the State as competent authorities for the purposes of the EC Regulations, any information received by them in the execution and enforcement of the EC Regulations, except where such exchange would infringe national legislation.

(4) Paragraph (3) is without prejudice to any other power of competent authorities to disclose information by or under Community legislation.

5. The Authority or the official agency, as the case may be, shall carry out official controls on food of non-animal origin imported into the State from third countries, in accordance with Chapter V of Title II of EC Regulation 882/2004 and EC Regulation 669/2009.

6. The Authority or the official agency, as the case may be, may order the official detention of consignments of food of non-animal origin imported into the State from third countries where that is required to fulfil its obligations under Chapter V of Title II of EC Regulation 882/2004. The place and length of such detention shall be determined by the Authority or the

official agency, as appropriate.

7. Where official controls carried out pursuant to Chapter V of Title II of EC Regulation 882/2004 establish non-compliance with food legislation, the Authority or the official agency, as the case may be, shall detain and take further measures to deal with the non-compliant consignment in accordance with Article 19(1) of that Regulation.

8. Where the official controls carried out pursuant to Chapter V of Title II of EC Regulation 882/2004 indicate that a consignment is injurious to human or animal health or unsafe, the Authority or the official agency, as the case may be, shall deal with the consignment in accordance with Article 19(2)(a) of that Regulation.

9. (1) The Authority or the official agency, as the case may be, shall only allow the re-dispatch of consignments where the conditions laid down in Article 21 of EC Regulation 882/2004 are satisfied.

(2) The Authority or the official agency, as the case may be, shall destroy a consignment after the expiry of 60 days following the day on which it decided on the destination of the consignment, unless a delay in re-dispatch is justified.

10. (1) In the case of food of non-animal origin imported from third countries and subjected to an increased level of official controls under EC Regulation 669/2009—

(a) food business operators may only import consignments of such food into the State through the designated point of entry for the particular product;

(b) food business operators or their representatives shall, at least one working day prior to the physical arrival of a consignment of such food, notify the official agency at the particular designated point of entry of the pending arrival, by means of Part I of the common entry document;

(c) where such food is not presented for official controls, or is not presented in accordance with any specific requirements established in accordance with Article 17 of EC Regulation 882/2004, the official agency shall order that the consignment be recalled and placed under official detention without delay and that it then be either destroyed or re-dispatched in accordance with Article 21 of EC Regulation 882/2004;

(d) consignments of such food shall be subject to an increased level of official controls at designated points of entry, in accordance with Article 8 of EC Regulation 669/2009;

(e) the release for free circulation of consignments of such food shall be subject to the presentation by the food business operator or their representative to the custom authorities of a common entry document, or its electronic equivalent, duly completed by the official agency once all controls required in accordance with Article 8(1) of EC Regulation 669/2009 have been carried out and favourable results from physical checks, where such checks are required, are known;

(f) where the official agency informs the food business operator that a consignment of such food has special characteristics within the meaning of Article 11 of EC Regulation 669/2009, the food business operator shall make available to the official agency the

resources, logistics and equipment referred to in that Article;

(g) where official controls establish non-compliance, an authorised officer of the official agency shall complete Part III of the common entry document and action shall be taken pursuant to Articles 19, 20 and 21 of EC Regulation 882/2004;

(h) sampling and analysis for the official control of the levels of lead and cadmium shall be carried out in accordance with the Annex to Commission Regulation (EC) No. 333/2007, without prejudice to EC Regulation 882/2004;

(i) sampling for the official control of the levels of mycotoxins in foodstuffs shall be carried out in accordance with the methods set out in Annex I to Commission Regulation (EC) No. 401/2006;

(j) sample preparation and methods of analysis used for the official control of the levels of mycotoxins in foodstuffs shall comply with the criteria set out in Annex II to Commission Regulation (EC) No. 401/2006;

(k) in addition to the requirements of subparagraphs (h), (i) and (j), sampling and analysis for the official control of the contaminants specified therein shall be in accordance with Part 4 of the European Communities (Certain Contaminants in Foodstuffs) Regulations 2010 ( S.I. No. 218 of 2010 ).

(2) Paragraph (1) shall not apply to food of non-animal origin imported from third countries and subjected to an increased level of official controls under EC Regulation 669/2009 due to a risk of the presence of pesticides therein.

11. The official agency shall ensure that the designated points of entry comply with the minimum requirements set down in Article 4 of EC Regulation 669/2009.

12. The Authority, or the official agency, as the case may be, shall provide the food business operator concerned, or a representative thereof, with:

(a) written notification of its decision concerning action to be taken under these Regulations, together with the reasons for its decision, and

(b) information on the right of appeal against such decisions.

13. It shall be the responsibility of the Authority to ensure that the obligations set out in Article 23(7) of EC Regulation 882/2004 are met.

### PART 3 FEES AND SANCTIONS

14. (1) The Authority and the official agency shall, pursuant to Article 27(4) of EC Regulation 882/2004 and Article 14 of EC Regulation 669/2009, set and charge fees to cover the costs occasioned by the increased level of official controls carried out pursuant to EC Regulation 669/2009.

(2) The food business operator responsible for the particular consignment, or representatives thereof, shall pay the fees set pursuant to paragraph (1).

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

(4) Moneys received under this Regulation shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

(5) The Public Offices Fees Act 1879 (42 & 43 Vict. Cap 58) does not apply to a fee charged pursuant to this Regulation.

(6) The Authority or the official agency, as the case may be, may order that a consignment be destroyed, or otherwise disposed of, where a food business operator has failed to pay a fee charged pursuant to this Regulation in relation to said consignment and the Authority or official agency forms the view that the consignment has been abandoned.

15. (1) A person is guilty of an offence if he or she fails to comply with these Regulations.

(2) Paragraph (1) shall not apply to an authorised officer acting in the course of his or her duties pursuant to these Regulations.

(3) A person is guilty of an offence if he or she, by act or omission—

(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 request under these Regulations;

(c) fails to comply with a request or notice from an authorised officer under these Regulations;

(d) makes a statement to an authorised officer which the person knows is false or misleading;

(e) gives, in purported compliance with a request under these Regulations, a name, an address or corroborative evidence which is false or misleading;

(f) imports products listed in Annex I to EC Regulation 669/2009 but fails to submit a common entry document in accordance with Regulation 10(1)(b) and Article 6 of EC Regulation 669/2009;

(g) releases for free circulation in the State, products listed in Annex I to EC Regulation 669/2009, not having presented to the customs authorities a common entry document, or its electronic equivalent, duly completed by the official agency in accordance with Article 10 of EC Regulation 669/2009;

(h) forges, or utters knowing it to be forged, a common entry document or other document purporting to be issued, granted or given under these Regulations, or required for the purposes of these Regulations (hereafter in this Regulation referred to as "a forged document");

(i) alters with intent to defraud or deceive, or utters knowing it to be so altered, a common entry document or other document issued, granted or given under these Regulations, or required for the purposes of these Regulations (hereafter referred to as “an altered document”);

(j) has in his or her possession, without lawful authority, a forged document or an altered document, knowing it to be a forged or altered document as the case may be;

(k) tampers with any substance or thing with intent to defraud or deceive and with the result that a sample taken pursuant to these Regulations does not correctly represent the substance sampled;

(l) tampers or interferes with any sample taken under these Regulations, with intent to defraud or deceive;

(m) fails to make available to the official agency resources, logistics and equipment required by the official agency pursuant to Regulation 10(1)(f);

(n) fails to pay a fee payable pursuant to Regulation 14;

(o) splits a consignment of food listed in Annex I to EC Regulation 669/2009 before the increased level of controls provided in EC Regulation 669/2009 has been completed and the common entry document has been completed by the official agency in accordance with Article 8 of that Regulation;

(p) fails to ensure that an authenticated copy of the relevant common entry document accompanies each part of a consignment split in accordance with Article 12 of the EC Regulation 669/2009;

(q) provides misleading information in relation to a proposed re-dispatch of a consignment in accordance with Article 21 of EC Regulation 882/2004.

(4) Where a body corporate, or a person acting on behalf of a body corporate, commits an offence under these Regulations and the offence is committed with the consent, connivance or approval of, or is attributable to any neglect or default on the part of, any director, manager, secretary or any other officer of such body, or a person purporting to act in any such capacity, such person is also 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.

(5) For the purposes of these Regulations, every contravention of a provision of these Regulations shall be deemed a separate contravention and every contravention of a paragraph or a subparagraph of such provision shall also be deemed to be a separate contravention and shall carry the same penalty as for a single contravention of any such provision.

(6) A person who is guilty of an offence under these Regulations is liable—

(a) on summary conviction, to a fine not exceeding €5,000 or, at the discretion of the court, to imprisonment for a term not exceeding 3 months, or both, or,

(b) on conviction on indictment, to a fine not exceeding €500,000, or imprisonment for

a term not exceeding 3 years, or both.

(7) Where a person is convicted of an offence under these Regulations, the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Authority or the official agency, as the case may be, the costs and expenses, measured by the court, incurred by the Authority or official agency in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees, consultants and advisors engaged by the Authority or official agency.

16. Notwithstanding section 57 of the Act of 1998, a summary offence under these Regulations may be prosecuted by:

- (a) the Authority, or
- (b) the official agency.

#### PART 4 REVOCATIONS

17. (1) The European Communities (Emergency Measures regarding Chilli and Chilli Products) Regulations 2004 ( S.I. No. 181 of 2004 ) 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.



GIVEN under my Official Seal,

5 August 2010.

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 Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 on the Official Control of Foodstuffs. They also give further effect to Regulation (EC) No. 669/2009 of 24 July 2009 implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504/EC, as amended by Commission Regulation (EU) No. 212/2010 of 12 March 2010. In addition, these Regulations revoke the European Communities (Emergency Measures regarding Chilli and Chilli Products) Regulations 2004 ( S.I. No. 181 of 2004 ).



These Regulations may be cited as the European Communities (Official Controls on the Import of Food of Non-Animal Origin) Regulations 2010 and they come into effect on the date they were signed.

1 OJ L 165, 30.4.2004, p. 1.

2 OJ L 191, 28.5.2004, p. 1.

3 OJ L 97, 9.4.2008, p. 85.

4 OJ L 278, 21.10.2008, p. 6.

5 OJ L 194, 25.7.2009, p. 11.

6 OJ L 65, 13.3.2010, p. 16

7 OJ L 31, 1.2.2002, p. 1

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