

S.I. No. 218/2010 — European Communities (Certain Contaminants in Foodstuffs) Regulations 2010.

S.I. No. 218/2010 — European Communities (Certain Contaminants in Foodstuffs) Regulations 2010. 2010 218

Notice of the making of this Statutory Instrument was published in

“Iris Oifigiúil” of 25th May, 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), having regard to Council Regulation (EEC) No. 315/93 of 8 February 1993¹ laying down Community procedures for contaminants in food, and for the purpose of giving effect to Commission Regulation (EC) No. 1881/2006 of 19 December 2006² regarding setting maximum levels for certain contaminants in foodstuffs, as amended by Commission Regulation (EC) No. 1126/2007 of 28 September 2007³, Commission Regulation (EC) No. 565/2008 of 18 June 2008⁴, Commission Regulation (EC) No. 629/2008 of 2 July 2008⁵, Commission Regulation (EU) No. 105/2010 of 5 February 2010⁶ and Commission Regulation (EU) No. 165/2010 of 26 February 2010⁷, and for the purpose of giving further effect to Commission Regulation (EC) No. 401/2006 of 23 February 2006⁸ laying down the methods of sampling and analysis for the official control of the levels of mycotoxins in foodstuffs and for the purpose of giving effect to Commission Regulation (EC) No. 1882/2006 of 19 December 2006⁹ laying down methods of sampling and analysis for the official control of the levels of nitrates in certain foodstuffs, Commission Regulation (EC) No. 1883/2006 of 19 December 2006¹⁰ laying down methods of sampling and analysis for the official control of levels of dioxins and dioxin-like PCBs in certain foodstuffs, Commission Regulation (EC) No. 333/2007 of 28 March 2007¹¹ laying down the methods of sampling and analysis for the official control of the levels of lead, cadmium, mercury, inorganic tin, 3-MCPD and benzo(a)pyrene in foodstuffs and Commission Regulation (EU) No. 178/2010 of 2 March 2010¹² amending Regulation (EC) No. 401/2006 as regards groundnuts (peanuts), other oilseeds, tree nuts, apricot kernels, liquorice and vegetable oil, hereby make the following regulations—

PART 1 Preliminary

1. These Regulations may be cited as the European Communities (Certain Contaminants in Foodstuffs) Regulations 2010.

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 Chemist at the State Laboratory,
- (b) a Deputy Public Analyst located at a Public Analyst's Laboratory,
- (c) an Executive Analytical Chemist located at a Public Analyst's Laboratory,
- (d) a Public Analyst located at a Public Analyst's Laboratory,
- (e) a Scientific or Technical Officer at the Marine Institute,
- (f) a Senior Chemist at the State Laboratory,
- (g) the Senior Chemist at the Marine Institute,
- (h) the State Chemist at the State Laboratory, or
- (i) a person, or member of a class of persons, designated by the Minister pursuant to Regulation 27;

“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;

“Commission Regulation (EC) No. 401/2006” means 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 as amended by Commission Regulation (EU) No. 178/2010 of 2 March 2010;

“Commission Regulation (EC) No. 1881/2006” means Commission Regulation (EC) No. 1881/2006 of 19 December 2006 regarding setting maximum levels for certain contaminants in foodstuffs, as amended by Commission Regulation (EC) No. 1126/2007 of 28 September 2007, Commission Regulation (EC) No. 565/2008 of 18 June 2008, Commission Regulation (EC) No. 629/2008 of 2 July 2008, Commission Regulation (EU) No. 105/2010 of 5 February 2010 and Commission Regulation (EU) No. 165/2010 of 26 February 2010;

“Commission Regulation (EC) No. 1882/2006” means Commission Regulation (EC) No. 1882/2006 of 19 December 2006 laying down methods of sampling and analysis for the official control of the levels of nitrates in certain foodstuffs;

“Commission Regulation (EC) No. 1883/2006” means Commission Regulation (EC) No. 1883/2006 of 19 December 2006 laying down methods of sampling and analysis for the official control of levels of dioxins and dioxin-like PCBs in certain foodstuffs;

“Commission Regulation (EC) No. 333/2007” means Commission Regulation (EC) No. 333/2007 of 28 March 2007 laying down the methods of sampling and analysis for the official control of the levels of lead, cadmium, mercury, inorganic tin, 3-MCPD and benzo(a)pyrene in foodstuffs;

“contaminant” means any substance not intentionally added to food which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry and veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food, or as a result of environmental contamination. (This definition does not cover extraneous matter such as insect fragments, animal hair, etc.);

“EU Regulations” means Council Regulation (EEC) No. 315/93 of 8 February 1993 ¹ laying down Community procedures for contaminants in food, Commission Regulation (EC) No. 1881/2006 of 19 December 2006 ² regarding setting maximum levels for certain contaminants in foodstuffs, as amended by Commission Regulation (EC) No. 1126/2007 of 28 September 2007 ³, Commission Regulation (EC) No. 565/2008 of 18 June 2008 ⁴, Commission Regulation (EC) No. 629/2008 of 2 July 2008 ⁵, Commission Regulation (EU) No. 105/2010 of 5 February 2010 ⁶ and Commission Regulation (EU) No. 165/2010 of 26 February 2010 ⁷ and as regards laying down methods of sampling and analysis for the official control of the levels of certain contaminants in foodstuffs, Commission Regulation (EC) No. 401/2006 of 23 February 2006 ⁸, Commission Regulation (EC) No. 1882/2006 of 19 December 2006 ⁹, Commission Regulation (EC) No. 1883/2006 of 19 December 2006 ¹⁰, Commission Regulation (EC) No. 333/2007 of 28 March 2007 ¹¹, and Commission Regulation (EU) No. 178/2010 of 2 March 2010 ¹²;

“Foodstuffs” have the same meaning as “food” (or “foodstuff”) as defined in Article 2 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002¹³, 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;

“General Food Law Regulation” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 ¹³, 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;

“Marine 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. 882/2004 of the European Parliament and of the Council of 29 April 2004 ¹⁴ 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 Marine 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, or
- (f) a laboratory designated by the Minister pursuant to Regulation 27;

“service contract” means a contract entered into between the Authority and the 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 EU Regulations or in the General Food Law Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in the EU 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 a Schedule is to a Schedule to these Regulations, unless it is indicated that reference to some other Regulations is intended.

(d) A reference in these Regulations to an Article is to an Article of the EU Regulations, unless it is indicated that reference to some other instrument is intended.

3. The competent authority for the purposes of the EU Regulations and of these Regulations shall be—

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

PART 2 General Provisions — Setting Maximum Levels for Certain Contaminants in Foodstuffs

4. A person shall not place foodstuffs on the market unless they comply with the provisions laid down in these Regulations and in the EU Regulations.

5. A person shall not place on the market foodstuffs containing a contaminant in an amount which is unacceptable from the public health viewpoint and, in particular, at a toxicological level.

6. (1) For the purposes of this Regulation and of Regulations 7 to 11, all references to “the Annex” mean the Annex to Commission Regulation (EC) No. 1881/2006 of 19 December 2006, as amended by Commission Regulation (EC) No. 1126/2007 of 28 September 2007, Commission Regulation (EC) No. 565/2008 of 18 June 2008 and Commission Regulation (EC) No. 629/2008 of 2 July 2008 and Commission Regulation (EU) No. 105/2010 of 5

February 20106 and Commission Regulation (EU) No. 165/2010 of 26 February 20107.

(2) A person shall not place on the market any of the foodstuffs listed in the Annex where such foodstuffs contain a contaminant listed in the Annex, at a level exceeding the maximum level set out therein for the contaminant in question.

(3) The maximum levels specified in the Annex shall apply to the edible part of the foodstuffs concerned, unless otherwise specified in the Annex.

7. (1) When applying the maximum levels set out in the Annex to foodstuffs which are dried, diluted, processed or composed of more than one ingredient, the matters referred to at indents (a) to (d) inclusive of Article 2.1 of Commission Regulation (EC) No. 1881/2006 shall be taken into account.

(2) A food business operator is guilty of an offence if, as required by Article 2.2 of Commission Regulation (EC) No. 1881/2006 and in the absence of any specific Community maximum levels for the dried, diluted, processed and/or compound foodstuffs concerned, the operator fails to provide to the Authority or to an official agency, or to both, for the purpose of and/or during the course of an official control, the specific concentration or dilution factors for such operations or foodstuffs. The operator shall also be guilty of an offence if, whilst providing such factors, he or she fails to provide the appropriate experimental data justifying the factors proposed to the Authority, to an official agency, or to both.

(3) Where in the absence of specific Community maximum levels for the dried, diluted, processed and/or compound foodstuffs concerned, a food business operator, as required by Article 2.2 of Commission Regulation (EC) No. 1881/2006, fails to provide the necessary concentration or dilution factor, or provides a factor that the Authority or the official agency deems inappropriate in view of the justification given, the Authority or the official agency shall, in accordance with and pursuant to the requirements of Article 2.2 of Commission Regulation (EC) No. 1881/2006, define the concentration or dilution factor.

8. (1) A person shall not—

(a) use foodstuffs not complying with the maximum levels set out in the Annex as food ingredients;

(b) mix foodstuffs not complying with the maximum levels set out in the Annex with foodstuffs which do so comply;

(c) mix foodstuffs which are to be subjected to sorting or other physical treatment to reduce contamination levels with foodstuffs intended either for direct human consumption or for use as a food ingredient.

(2) A person shall not intentionally detoxify by chemical treatments foodstuffs containing contaminants listed in section 2 of the Annex (Mycotoxins).

9. (1) Groundnuts (peanuts), other oilseeds, tree nuts, dried fruit, rice and maize not complying with the appropriate maximum levels of aflatoxins laid down in points 2.1.5, 2.1.6, 2.1.7, 2.1.8, 2.1.10 and 2.1.11 of the Annex may be placed on the market, provided that they comply with each of the requirements set out in indents (a) to (d) of Article 4 of

Commission Regulation (EC) No. 1881/2006.

(2) Groundnuts, (peanuts), other oilseeds, derived products thereof and cereals that are placed on the market shall comply with the maximum levels of aflatoxins laid down in points 2.1.5 and 2.1.11 of the Annex, unless they are not intended for human consumption and the person responsible can show that:

(a) there is a clear indication of the intended use either on the label of each individual bag, box or other receptacle containing such products or on the original document accompanying them;

(b) the said accompanying document has a clear link with the consignment by means of mentioning the consignment identification code, which is on each individual bag, box or other receptacle of the consignment;

(c) the business activity of the consignee of the consignment given on the accompanying document is compatible with the intended use for purposes other than human consumption.

(3) Groundnuts (peanuts) and other oilseeds for crushing, shall comply with the maximum levels laid down in point 2.1.1 of the Annex, unless the person responsible for consignments thereof, the final destination of which must be a crushing plant, can show that they are clearly labelled showing their use and bearing the indication 'product to be subject to crushing for the production of refined vegetable oil', and that this indication is included on the label of each individual bag, box or other receptacle comprised in the consignment, as well as on the accompanying document(s).

10. The maximum levels laid down in the Annex for 'lettuce grown in the open air' (open-grown lettuce), including those in points 1.3 and 1.4 thereof for nitrates, shall also apply to 'lettuce grown under cover' (protected lettuce), unless the latter lettuce is clearly labelled as 'lettuce grown under cover'.

11. (1) The prohibition in Regulation 6(2) shall not apply to foodstuffs that were placed on the market before:

(a) the dates listed, respectively, in indents (a), (c) and (d) of Article 11 of Commission Regulation (EC) No. 1881/2006 and in indent (b) as amended by Article 1(1) of Commission Regulation (EC) No. 1126/20073, as regards the contaminants to which reference is therein made;

(b) the date listed in Article 2 of Commission Regulation (EC) No. 629/20085 as regards the foodstuffs specified in points 3.1.18, 3.2.19, 3.2.20 and 3.3.3 of the Annex and which contain lead, cadmium and/or mercury,

provided that, in all such cases, such products were placed on the market in conformity with the provisions applicable thereto at the date of their placing on the market.

(2) The prohibition in Regulation 6(2) shall not apply to foodstuffs containing ochratoxin A, the maximum level for which, as laid down in point 2.2.11 of the Annex, is applicable as from 1 July 2012, provided they are placed on the market at a date prior to 1 July 2012 in

conformity with provisions applicable at the date of their placing on the market. The maximum level laid down in points 2.2.11 and 2.2.12 shall not, in any event, apply to foodstuffs placed on the market at a date prior to 1 July 2010 in conformity with the provisions applicable at such date.

(3) The prohibition in Regulation 6(2) shall not apply to apricot kernels and oilseeds, other than groundnuts (peanuts) and processed products thereof, which were placed on the market at a date prior to 9 March 2010 in conformity with provisions applicable at such date.

(4) In all cases where it is alleged, pursuant to paragraphs (1) to (3), that the prohibition in Regulation 6(2) is inapplicable by virtue of the date of placing on the market of the foodstuffs concerned, it shall be for the food business operator making such claim to prove both the date of placing on the market of the foodstuffs and that they were so placed at that date in conformity with the provisions applicable thereto.

12. (1) The Minister, after consultation with the Authority, may, by order, temporarily suspend or restrict the application of these Regulations where, as a result of new information or of a reassessment of existing information, there is reason to suspect that a contaminant in food, although complying with these Regulations, constitutes a health risk.

(2) The Minister, after consultation with the Authority, may, by order, temporarily suspend or restrict the placing on the market and/or sale of a particular food, where, as a result of new information or of a reassessment of existing information, there is reason to suspect that a contaminant present therein, although complying with these Regulations and the EU Regulations, constitutes a health risk.

(3) Any temporary suspension or restriction under this Regulation shall take effect upon the publication of a notice in writing of the adoption of the order in question in *Iris Oifigiúil*.

PART 3 General Provisions — Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs

13. (1) 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.

(2) 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.

14. Sampling, sample preparation and analyses for the official control of the levels of nitrates in foodstuffs listed in section 1 of the Annex to Commission Regulation (EC) No. 1881/2006 shall be carried out in accordance with the methods set out in the Annex to Commission Regulation (EC) No. 1882/2006.

15. (1) Sampling for the official control of the levels of dioxins, furans and dioxin-like PCBs in foodstuffs listed in section 5 of the Annex to Commission Regulation (EC) No. 1881/2006 shall be carried out in accordance with the methods set out in Annex I to Commission Regulation (EC) No. 1883/2006.

(2) Sample preparation and methods of analysis used for the official control of the levels of dioxins, furans and of dioxin-like PCBs in foodstuffs listed in section 5 of the Annex to Commission Regulation (EC) No. 1881/2006 shall comply with the methods set out in Annex II to Commission Regulation (EC) No. 1883/2006.

16. Sampling and analysis for the official control of the levels of lead, cadmium, mercury, inorganic tin, 3-MCPD and benzo(*a*)pyrene listed in section 3, 4 and 6 of the Annex to Commission Regulation (EC) No. 1881/2006 shall be carried out in accordance with the Annex to Commission Regulation (EC) No. 333/2007, but without prejudice to the provisions of the Official Controls Regulation.

PART 4 Enforcement

17. (1) The enforcement of these Regulations and of the EU Regulations shall be carried out in accordance with the provisions of these Regulations.

(2) These Regulations shall be deemed to be food legislation for the purposes of the Act of 1998.

(3) These Regulations shall be enforced by the Authority or by an official agency acting pursuant to a service contract with the Authority, or by both, and, without prejudice to paragraph (1), the enforcement provisions contained in the Act of 1998 shall apply for the purposes of ensuring compliance with the requirements of these Regulations.

18. A food business operator shall provide information requested by the Authority or by an official agency, whether pursuant to these Regulations, the EU Regulations, or the Official Controls Regulation. Such information shall be provided by a food business operator to the Authority where the request is made by it, or to an official agency where the request is made by such an agency. The nature and form in which such information is to be provided and the person or persons to whom it is to be addressed shall be specified either in the specific request to the food business operator, or in general guidelines adopted by the Authority for this purpose and made available to food business operators by whatever means the Authority deems appropriate.

19. (1) 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.

(2) An authorised officer may, for the purposes of these Regulations, purchase or take without payment a sample of food.

(3) An authorised officer may, for the purpose of taking a sample of food open any receptacle.

(4) An authorised officer may exercise such other powers as may be reasonably necessary to ensure that these Regulations and the EU Regulations are being complied with.

20. Where an authorised officer purchases or takes without payment a sample of any food with the intention of having it analysed:

(1) he or she shall notify the food business operator or person in apparent charge or control of such foodstuffs forthwith of his or her intention of having the sample analysed;

(2) he or she may, by notice in writing to the food business operator, or the person in apparent charge or control of such foodstuffs, prohibit their removal except to any place which may be specified in the notice, during such period as may be specified in the notice, but not exceeding 15 working days from the date of the taking of the sample;

(3) he or she shall, in the presence of the food business operator 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;

(4) as soon as is reasonably practicable after he or she has received such a sample, the approved examiner, shall issue to the food business operator, or the person in apparent charge or control of such food, a certificate in the form set out in Schedule 1, or a certificate in like form, confirming that the integrity of the sample had been preserved;

(5) the approved examiner or a person acting under his or her direction shall prepare and sub-divide the sample in accordance with Regulations 13, 14, 15 or 16, as appropriate;

(6) in proceedings for an offence under these Regulations, the result of any test, examination or analysis of, or report on a sample of food, taken pursuant to these Regulations, shall not be adduced in evidence, unless before the proceedings were instituted the sample was divided pursuant to paragraph (5) of this Regulation;

(7) 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 food business operator, or to the person in apparent charge or control of such food, in such a way that the integrity of the sample cannot be compromised.

21. 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.

22. (1) The approved examiner, or a person 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 2, or a certificate in like form, shall be completed.

(3) An official certificate given in accordance with paragraph (2) shall be *prima facie* evidence of the matters contained therein, until the contrary is proved.

23. (1) Where a sample of food is taken by an authorised officer in pursuance of these Regulations for analysis by an approved examiner, the Authority, or an official agency as the case may be, shall draw up a report in accordance with Article 9 of the Official Controls Regulation.

(2) Where the certificate given in accordance with Regulation 22 indicates that there has been non-compliance with these Regulations, the Authority, or the official agency, as the case may be, shall provide the food business operator, or the person in apparent charge or control of such food, with a copy of the report referred to in paragraph (1).

24. (1) An authorised officer may, for the purposes of these Regulations, seize, remove, detain or direct the withdrawal from the market of any food, where he or she suspects that the food fails to comply with the provisions of these Regulations.

(2) An authorised officer may, with the consent in writing of the food business operator, or the person in apparent charge or control of such food or in accordance with an order of a judge of the District Court under paragraph (4) of this Regulation, destroy or otherwise dispose of same so as to prevent the food being used for human consumption.

(3) An authorised officer who has seized, removed, detained or directed the withdrawal from the market of food in pursuance of the provisions of this Regulation may, on giving notice in writing to the food business operator, or the person in apparent charge or control of such food, of his or her intention to do so, apply to a judge of the District Court for an order directing that such food be destroyed or otherwise disposed of.

(4) A judge of the District Court, to whom an application is made for an order under paragraph (3), may, if satisfied that such food fails to comply with these Regulations, order that it be destroyed or otherwise disposed of, after such period, not exceeding 14 days, as may be specified in such order, and an authorised officer shall destroy or dispose of the food accordingly.

25. (1) An authorised officer may, for the purposes of these Regulations, inspect and take copies, or samples, of labels used on food or samples of any other relevant substance.

(2) An authorised officer may examine any procedure connected with the manufacture of a food.

26. In the course of his or her duties, an authorised officer may require a person to state his or her name and address and, if the authorised officer thinks it necessary, to produce corroborative evidence of same.

27. 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 testing and verification may be carried out, 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, testing and verification for the purposes of these Regulations.

28. (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 or an approved examiner, or to a person acting under such an officer's or examiner's express direction, 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—

(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 the Authority, from an official agency or 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 request under these Regulations a name, address or corroborative evidence or information which is false or misleading.

29. 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 who 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.

30. (1) A person is guilty of an offence if he or she forges, or utters knowing it to be forged, a certificate of analysis or other document purporting to be issued, granted or given under these Regulations, or required for the purposes of these Regulations (hereafter referred to as "a forged document").

(2) A person is guilty of an offence if he or she alters with intent to defraud or deceive, or who utters, knowing it to be so altered, a certificate of analysis 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").

(3) A person is guilty of an offence if he or she without lawful authority has in his or her possession a forged document or an altered document, knowing it to be a forged or altered document as the case may be.

(4) A person is guilty of an offence if he or she with the intent to defraud or deceive-

(a) tampers with any substance or item with the result that a 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.

(5) A person is guilty of an offence if he or she falsely represents himself or herself to be an authorised officer.

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

(2) 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.

(3) No prosecution on indictment shall be taken on foot of these Regulations in respect of an offence that occurred before the entry into force of these Regulations.

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

(a) the Authority, or

(b) an official agency.

PART 5 Revocation

33. The following are revoked:

(a) The European Communities (Certain Contaminants in Foodstuffs) Regulations 2001 (S.I. No. 400 of 2001).

(b) 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 (S.I. No. 412 of 2006).

34. References in any other instrument to the Regulations revoked under Regulation 33 shall be construed as references to these Regulations, as appropriate.

Schedule 1

Form of official certificate to be issued by an approved examiner to the food business operator, or the person in apparent charge or control of such food in respect of which a sample was taken pursuant to these Regulations.

European Communities (Certain Contaminants in Foodstuffs) Regulations 2010

Certificate of Integrity of Sample

To (1).....

I, the undersigned (2).....

being an Approved Examiner for the purposes of the above Regulations, certify that on the.....day of..... 20.....

a sample marked (3).....

Date.....

Number

Weight or Measure (4).....

was submitted to me by an authorised officer(5)..... 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 (6).....

Name in BLOCK LETTERS.....

Status.....

Signature.....

Official Stamp

NOTES

(1)Insert the name and address of the food business operator.

(2)Insert description (e.g. Senior Chemist at the Marine 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.

(5)Insert the name of the authorised officer who submitted the sample.

(6)Insert the name and address of the laboratory carrying out the analysis/examination.

Schedule 2

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

European Communities (Certain Contaminants in Foodstuffs) Regulations 2010

Certificate of Analysis

To(1).....

I, the undersigned (2).....

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

the.....day 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 this..... day 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 at the Marine 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.



Given under my Official Seal,

19 May 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).

Having regard to Council Regulation (EEC) No. 315/93 of 8 February 1993, these Regulations give effect to Commission Regulation (EC) No. 1881/2006 of 19 December 2006 regarding setting maximum levels for certain contaminants in foodstuffs, as amended by Commission Regulation (EC) No. 1126/2007 of 28 September 2007, Commission Regulation (EC) No. 565/2008 of 18 June 2008, Commission Regulation (EC) No. 629/2008 of 2 July 2008, Commission Regulation (EU) No. 105/2010 of 5 February 2010 and Commission Regulation (EU) No. 165/2010 of 26 February 2010.

These Regulations also give further 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 and give effect to Commission Regulation (EC) No. 1882/2006 of 19 December 2006 laying down methods of sampling and analysis for the official control of the levels of nitrates in certain foodstuffs, Commission Regulation (EC) No. 1883/2006 of 19 December 2006 laying down methods of sampling and analysis for the official control of levels of dioxins and dioxin-like PCBs in certain foodstuffs, Commission Regulation (EC) No. 333/2007 of 28 March 2007 laying down the methods of sampling and analysis for the official control of the levels of lead, cadmium, mercury, inorganic tin, 3-MCPD and benzo(a)pyrene in foodstuffs and Commission Regulation (EU) No. 178/2010 of 2 March 2010 amending Regulation (EC) No. 401/2006 as regards groundnuts (peanuts), other oilseeds, tree nuts, apricot kernels, liquorice and vegetable oil.

The principal effect of these Regulations is to provide for the enforcement of the maximum levels for certain contaminants in foodstuffs set in Commission Regulation (EC) No. 1881/2006, as amended, and to provide for the enforcement of 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 which methods are set out in the Annexes to Commission Regulations (EC) Nos. 401/2006, as amended, 1882/2006, 1883/2006 and 333/2007.

These Regulations may be cited as the European Communities (Certain Contaminants in

Foodstuffs) Regulations 2010.

1 OJ L37,13.2.1993, p.1.

2 OJ L364, 20.12.2006, p.5.

3 OJ L255,29.9.2007, p.14.

4 OJ L160, 19.6.2008, p.20.

5 OJ L173, 3.7.2008, p.6.

6 OJ L35, 6.2.2010, p.7.

7 OJ L50, 27.2.2010,p.8.

8 OJ L70, 9.3.2006, p.12.

9 OJ L364,20.12.2006, p.25.

10 OJ L364, 20.12. 2006, p.32.

11 OJ L88, 29.3.2007,p.29.

12 OJ L52, 3.3.2010, p.32.

13 OJ L31, 1.2.2002, p. 1.

14 OJ L165, 30.4.2004, p. 1, as affected by the Corrigendum to Regulation (EC) No. 882/2004, OJ L191, 28.5.2004, p.1.

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