

S.I. No. 117/2010 — European Communities (Official Control of Foodstuffs) Regulations 2010.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 26th March, 2010.*

I, MARY HARNEY, Minister for Health and Children, in exercise of the powers conferred on me by section 3 (as amended by section 2 of the European Communities Act 2007 (No. 18 of 2007) and section 4 of the European Union Act 2009 (No. 33 of 2009)) of the European Communities Act 1972 (No. 27 of 1972), and for the purpose of giving further effect to Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004¹ 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 2004² and as amended by Council Regulation (EC) No. 301/2008 of 17 March 2008³ and Commission Regulation (EC) No. 1029/2008 of 20 October 2008⁴, hereby make the following regulations:

PART 1 INTERPRETATION

1. These Regulations may be cited as the European Communities (Official Control of 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 Chief Medical Scientist located at an official laboratory,
- (c) a Consultant Microbiologist located at an official laboratory,
- (d) a Deputy Public Analyst located at a Public Analyst’s Laboratory,
- (e) an Executive Analytical Chemist located at a Public Analyst’s Laboratory,
- (f) an officer at or above the grade of Senior Scientific Officer of the Radiological Protection Institute of Ireland,
- (g) a Public Analyst located at a Public Analyst’s Laboratory,
- (h) a Section Manager or Team Leader at the Marine Institute with responsibility for testing of food or food products,
- (i) a Senior Chemist at the Marine Institute,
- (j) a Senior Chemist at the State Laboratory,
- (k) the State Chemist at the State Laboratory, or
- (l) a person, or member of a class of persons, designated by the Minister pursuant to Regulation 12;

“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;

“Board” means the Board of the Authority;

“chief executive” means the chief officer of the Authority appointed under section 37 of the Act of 1998;

“control body” means a body to which the Authority or the official agency has delegated specific tasks related to official controls pursuant to Regulation 6 and Article 5 of the EC Regulation;

“EC Regulation” means Regulation (EC) No. 882/2004 of the European Parliament and of the

Council of 29 April 2004¹ 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 2004² and as amended by Council Regulation (EC) No. 301/2008 of 17 March 2008³ and Commission Regulation (EC) No. 1029/2008 of 20 October 2008⁴;

“food business operator” means a food business operator as defined in the General Food Law Regulation, insofar as such operator has responsibility for—

(a) any stage of production, processing or distribution of—

(i) food of non-animal origin,

(ii) food of animal origin sold directly to the final consumer except if the sale or supply is from an establishment registered or approved under the European Communities (Food and Feed Hygiene) Regulations 2009 (S.I. No. 432 of 2009),

(iii) food of animal origin, insofar as the food business supplies such food from a retail establishment to other retail establishments where such supply is a marginal, localised and restricted activity as defined in national law, or

(iv) food containing both products of plant origin and processed products of animal origin,
or

(b) the import or export of foods of non-animal origin or food containing both products of plant origin and processed products of animal origin,

or any related activities;

“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 2002⁵ 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);

“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 the Health Service Executive, carrying out functions under these Regulations or food legislation, pursuant to section 48 of the Act of 1998;

“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 Public Health Laboratory, HSE, Dublin Mid-Leinster,

(f) the Public Health Laboratory, Sligo,

- (g) the Public Health Laboratory, Waterford,
- (h) the Public Health Microbiology Laboratory, Cork,
- (i) the Public Health Microbiology Laboratory, Galway,
- (j) the Public Health Microbiology Laboratory, Limerick,
- (k) the Radiological Protection Institute of Ireland,
- (l) the State Laboratory, or
- (m) a laboratory designated by the Minister pursuant to Regulation 12;

“Radiological Protection Institute of Ireland” means the Radiological Protection Institute of Ireland, established under section 6 of the Radiological Protection Act 1991 (No. 9 of 1991);

“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 EC Regulation 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 Regulation 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 Regulation, 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.

PART 2 COMPETENT AUTHORITIES

3. (1) The competent authority for the purposes of the EC Regulation shall be—

(a) for the purposes of Article 5 of the EC Regulation, the Authority, the official agency and/or the official laboratory,

(b) for the purposes of Article 12 of the EC Regulation, the Minister,

(c) for the purposes of all other provisions of the EC Regulation, the Authority and/or the official agency, as appropriate.

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

(3) Paragraph (2) is without prejudice to any other power of competent authorities to disclose information by or under Community legislation.

4. (1) The Authority, the official agency and the official laboratories shall co-operate with the officials designated by the Commission of the European Union to carry out functions under Articles 40 and 45 of the EC Regulation and shall give all the necessary assistance to enable them to accomplish their tasks.

(2) The Authority or the official agency, as the case may be, shall permit the officials designated by the Commission of the European Union in accordance with paragraph (1) to accompany the authorised officers, as defined in Regulation 2(1), while carrying out official controls under these

Regulations and the EC Regulation.

(3) Officials designated by the Commission of the European Union and accompanying authorised officers pursuant to paragraph (2) may, for the purposes of ensuring compliance with the EC Regulation, enter premises or parts of premises and access information, including computer systems, relevant to the execution of their duties.

5. (1) Where the Authority, or the official agency, as the case may be, becomes aware of non-compliance with food legislation, and if such non-compliance may have implications for another Member State or States of the European Union, the Authority shall, without delay, pass such information to the other Member State or States without prior request for same.

(2) Where the Authority, or the official agency, as the case may be, establishes that goods from another Member State of the European Union do not comply with food legislation in such a way as to create a risk to human health or animal health or constitute a serious infringement of food legislation, the Authority, or the official agency in consultation with the Authority, shall contact the competent authority of the Member State of dispatch without delay.

(3) Where the Authority receives information from the competent authority of another Member State of the European Union, pursuant to Article 37 or 38 of the EC Regulation, the Authority, or the official agency, shall investigate the matter and take any measures it deems necessary and the Authority shall report back to the said competent authority in accordance with the particular article of the EC Regulation.

(4) Where the Authority receives information from a country outside of the European Union indicating non-compliance with food legislation and/or a risk to human health or animal health, it shall pass that information on in accordance with Article 39 of the EC Regulation.

(5) Where the Authority, or the official agency, as the case may be, establishes repeated non-compliance or other risks to humans, plants or animals from food, either directly or through the environment, the Authority shall inform the Commission and the competent authorities of the other Member States of the European Union without delay.

(6) When taking action to ensure compliance with food legislation, authorised officers may be accompanied by staff of a competent authority of another Member State of the European Union which has requested administrative assistance pursuant to Article 36 of the EC Regulation and such staff shall operate subject to the provisions of that article.

(7) The Authority shall inform the Commission of the European Union of third countries carrying out controls in the State pursuant to Article 52 of the EC Regulation.

6. (1) The Authority, the official agency and the official laboratories may delegate tasks to control bodies pursuant to Article 5 of the EC Regulation.

(2) Notwithstanding Regulation 3(1), the official agency and the official laboratories must consult and obtain the agreement of the Authority prior to delegating tasks to a particular control body for the first time.

(3) Where specific tasks are delegated to a control body pursuant to Article 5 of the EC Regulation, the control body shall—

(a) immediately communicate the results of the controls indicating non-compliance with food legislation to the delegating body under paragraph (1); and

(b) communicate the results of all other controls carried out to the delegating body under paragraph (1) on a regular basis or as required by that body.

(4) The delegating body under paragraph (1) may require a control body, in relation to the task delegated to it—

(a) to provide it with any information which it has reasonable cause to believe the control body is able to give; and

(b) to make available to it for inspection any records which it has reasonable cause to believe are held by the control body or are otherwise within the control of the control body (and, if they are kept in computerised form, to make them available in a legible form).

(5) The delegating body under paragraph (1) may copy any records made available to it under

paragraph (4)(b).

(6) A person who—

(a) fails without reasonable excuse to comply with any requirement imposed under paragraph (4); or

(b) in purported compliance with such a requirement, furnishes information which he or she knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

(7) For the purposes of paragraph (4), the term “control body” includes any member, officer or employee of a control body.

PART 3 OFFICIAL CONTROLS

7. (1) For the purposes of food legislation, the Authority or the official agency, as the case may be, shall carry out, or arrange to have carried out by a control body, specific tasks related to official controls referred to in Article 10 of the EC Regulation.

(2) Official controls carried out pursuant to paragraph (1) shall be carried out in accordance with the EC Regulation and these Regulations.

(3) Food business operators shall afford to authorised officers such facilities and assistance as are reasonably necessary to enable the officer to perform his or her functions under these Regulations, the EC Regulation or food legislation.

8. (1) An authorised officer may, for the purposes of food legislation, purchase or take without payment a sample of food or any relevant substance.

(2) An authorised officer may, for the purpose of taking a sample of food or any relevant substance, open any receptacle.

(3) Where an authorised officer purchases or takes without payment a sample of food or any relevant substance, with the intention of having it analysed, he or she shall after purchasing or taking the sample forthwith notify the food business operator or the person in apparent charge or control of the food or any relevant substance of his or her intention of having the sample analysed.

(4) Where an authorised officer purchases or takes without payment, with the intention of having it analysed, a sample of food or any relevant substance which is suspected by him or her to fail to comply with a provision of food legislation, he or she may, by notice in writing to the food business operator, or the person in apparent charge or control of such foods or other substances, 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.

9. (1) Where a sample of food or any relevant substance is taken pursuant to Regulation 8 for the purposes of official analysis and where the division of the sample is reasonably practicable, the authorised officer concerned may divide the sample into three approximately equal parts (enforcement, trade (defence) and referee), each of which he or she shall mark in such a way as to identify it as a part of the sample taken by the officer. The authorised officer shall, in the presence of the food business operator, or the person in apparent charge or control of such food:

(a) mark, seal and fasten each part in such a manner as its nature will permit, and in such a way that the integrity of the sample is not compromised;

(b) forward one part to the approved examiner in an official laboratory for analysis;

(c) give or send one part to the food business operator, and

(d) retain the third part.

(2) Where an authorised officer takes a sample of food or other relevant substance contained in unopened containers and its division into parts:

(a) is not reasonably practicable, or

(b) might affect the composition or impede the proper analysis of the sample

the provisions of paragraph (1) as regards the division of samples into parts shall be deemed to be

complied with if the authorised officer divides the containers into three lots and deals with each lot as if it were a sample as specified under paragraph (1).

(3) In proceedings for an offence under these Regulations or food legislation the result of any test, examination or analysis of, or report on, a sample of food or any relevant substance taken pursuant to these Regulations shall not be adduced unless before the proceedings were instituted the sample was divided as specified in paragraphs (1) and (2) of this Regulation. The part, package or container retained by the authorised officer shall be produced at the hearing.

(4) Where the Authority or the official agency, as the case may be, establishes serious non-compliance warranting immediate action it shall take any necessary action to ensure that the operator remedies the situation, notwithstanding that the sampling procedures set out in this Regulation have not been carried out.

10. (1) The approved examiner or a person under his or her direction shall analyse as soon as possible any sample of food or any relevant substance submitted to him or her in pursuance of these Regulations or food legislation and in accordance with the criteria set out in Annex III to the EC Regulation, the approved examiner shall certify to the person who submitted the sample to him or her the result of such analysis. The form of certificate set out in Schedule 1 to these Regulations or a certificate in like form shall be used.

(2) An official certificate given in accordance with paragraph (1) of this Regulation shall be *prima facie* evidence of the matters contained therein until the contrary is proved.

11. (1) Where an official control is carried out pursuant to Regulation 7, the Authority, or the official agency, as the case may be, shall draw up a report in accordance with Article 9 of the EC Regulation.

(2) Where an official control carried out pursuant to Regulation 7 indicates that there has been non-compliance with food legislation, the Authority, or the official agency, as the case may be, shall provide the food business operator with a copy of the report referred to in paragraph (1).

12. (1) In accordance with Article 12 of the EC Regulation, the Minister may, for the purposes of these Regulations, the EC Regulation and/or food legislation, designate, by notice in writing published in *Iris Oifigiúil*:

(a) a laboratory as a laboratory at which samples taken under these Regulations, the EC Regulation and/or food legislation 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, the EC Regulation and/or food legislation.

(2) Notwithstanding paragraph (1), the approved examiners and official laboratories as defined in Regulation 2(1) are designated for the purposes of analysis of samples taken for the purposes of official controls under these Regulations and the EC Regulation and for the purposes of food legislation.

13. (1) The Authority and the official agency shall ensure that they carry out their activities with a high level of transparency, in accordance with Article 7 of the EC Regulation.

(2) For the purposes of Article 7(1) of the EC Regulation, and without prejudice to Regulations 19(9) and 20(3), and sections 53(9) and 54(3) of the Act of 1998, members of staff of the Authority and the official agency may only release the following information to the public:

(a) information coming within the terms of Article 10 of the General Food Law Regulation, and

(b) information on the control activities and their effectiveness in an anonymised format.

(3) It is an offence for a member of staff of the Authority or the official agency to disclose information acquired when undertaking official controls which by its nature is covered by professional secrecy, in contravention of Article 7(2) of the EC Regulation.

PART 4 ENFORCEMENT MEASURES

14. (1) The enforcement of food legislation shall be carried out in accordance with the provisions of

these Regulations and the EC Regulation.

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

(3) These Regulations, the relevant provisions of the EC Regulation and food legislation shall be enforced by the Authority or, where appropriate, by the official agency and, without prejudice to paragraph (1), the enforcement provisions contained in the Act of 1998 and enforcement provisions contained in specific food legislation shall also apply for the purposes of ensuring compliance with the requirements of food legislation.

(4) The Authority, or the official agency, as the case may be, may adopt any of the measures in this Part or any other measure it deems appropriate to deal with non-compliance with food legislation. In deciding which action to take it shall take account of the nature of the non-compliance and the food business operator's past record with regard to non-compliance.

(5) 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 the action to be taken in accordance with paragraph (4), together with the reasons for its decision, and

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

(6) Where appropriate, the Authority shall also notify the competent authority of the Member State of dispatch of its decision concerning the action to be taken in accordance with paragraph (4).

15. (1) An authorised officer may, for the purposes of food legislation, seize, remove or detain any food or other products, which are suspected by him or her to fail to comply with a provision of food legislation.

(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 other products 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 them being used for human consumption.

(3) An authorised officer who has seized, removed or detained food or other products in pursuance of the provisions of this Regulation may, on giving notice in writing to the food business operator of his or her intention to do so, apply to a judge of the District Court for an order directing that such products 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 or products fail to comply with food legislation, order that they 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 them accordingly.

16. 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.

17. The Authority, or the official agency, as the case may be, may impose sanitation procedures, or any other action deemed necessary, on a food business operator in order to ensure the safety of food or compliance with food legislation.

18. The Authority, or the official agency, as the case may be, may authorise the use of food for purposes other than those for which it was originally intended.

19. (1) Where a food business operator fails to comply with food legislation, an authorised officer may, following consultations with the chief executive or such other officer of the Authority or the official agency designated in that behalf by the Board, serve, or arrange to have served, on the food business operator a notice ("closure order") signed by the officer or the chief executive or other officer of the Authority or official agency designated in that behalf by the Board, and the closure order shall, as appropriate—

(a) state that the authorised officer is of the opinion that all or part of the food business to which the order relates should cease operating, or that all or part of the premises to which the order relates should be closed,

(b) specify the provisions of food legislation with which the food business operator has failed

to comply,

(c) direct that all or part of the food business cease operating or that all or part of the premises be closed unless and until the contravention of provisions so specified in pursuance of subparagraph (b) have been remedied.

(2) The Board shall be notified at the next available meeting of the Board of the service of a closure order.

(3) A closure order shall take effect—

(a) where the order so declares, immediately the closure order is received by the person on whom it is served,

(b) in any other case—

(i) where no appeal is taken against the closure order, on the expiration of the period during which such an appeal may be taken or the day specified in the closure order as the day on which it is to come into effect, whichever is the later, or

(ii) in case such an appeal is taken, on the day next following the day on which the closure order is confirmed on appeal or the appeal is withdrawn or the day specified in the closure order as that on which it is to come into effect, whichever is the later.

(4) The bringing of an appeal against a closure order which is to take effect in accordance with paragraph (3)(a) shall not have the effect of suspending the operation of the closure order, but the appellant may apply to the court to have the operation of the closure order suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the order be suspended until the appeal is disposed of.

(5) (a) A person who is aggrieved by a closure order may, within the period of 7 days beginning on the day on which the closure order is served on him or her, appeal against the order to a judge of the District Court in the district court district in which the order was served in the prescribed manner and in determining the appeal the judge may—

(i) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the closure order, with or without modification, or

(ii) cancel the closure order.

(b) Where on the hearing of an appeal under this section a closure order is confirmed, notwithstanding paragraph (4) the judge of the District Court by whom the appeal is heard may, on the application of the appellant, suspend the operation of the closure order for such period as in the circumstances of the case the district judge considers appropriate.

(6) A person who appeals against a closure order or who applies for a direction suspending the application of the closure order under paragraph (4) shall at the same time notify the Authority or official agency of the appeal or the application and the grounds for the appeal or the application and the Authority or official agency shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(7) The chief executive or other person, being an employee of the Authority or member of the Board, authorised by the Board in this connection, may, for stated reasons, revoke or vary a closure order made in accordance with this section and the Board shall be notified at the next available meeting of the Board of any such revocation or variation and the reasons therefore.

(8) (a) Where a closure order has been served and activities are carried on in contravention of the order, the High Court may, on the application of an authorised officer, by order prohibit the continuance of the activities and order the closure of the premises.

(b) An application to the High Court for an order under this paragraph shall be by motion and the Court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate and the order by which an application under this paragraph is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

(9) The chief executive shall, in the interests of public health and consumer protection, make such arrangements as he or she considers appropriate or necessary to bring the contents of a closure order

to the attention of the public.

20. (1) Where a food business operator fails to comply with food legislation, an authorised officer may, following consultations with the chief executive or such other officer of the Authority or an official agency designated in that behalf by the Board, serve, or arrange to have served, on the proprietor or person in charge of the food in question a notice (“prohibition order”) signed by the officer or the chief executive or other officer of the Authority or official agency designated in that behalf by the Board, and the prohibition order shall—

(a) state that the authorised officer is of the opinion that a particular consignment, class, batch or item of food should be withdrawn from sale (whether or not the product is on the market for sale in the State or elsewhere) or prohibited from being placed on the market for sale or imported into, or exported out of, the State,

(b) specify the provision or provisions contravened and the matters giving rise to the said contravention,

(c) in respect of any or all of the following, direct the person on whom the prohibition order is served to ensure that the food—

(i) is not used for human consumption,

(ii) is recalled from sale or distribution (whether or not the food is on sale or being or has been distributed for sale in the State or elsewhere),

(iii) as appropriate in the interests of public health, is rendered safe for human consumption or is detained or is destroyed in a manner prescribed by the authorised officer,

and, in the event of non-compliance or delay by the person on whom the notice has been served, an authorised officer of the Authority or official agency shall, following consultations with the chief executive or other officer of the Authority or official agency designated in that behalf by the Board, take whatever steps are considered necessary to ensure compliance with the direction given under this paragraph and this may include the seizure and destruction of the products in question or the making of any arrangements for such seizure or destruction or both.

(2) The Board shall be notified at the next available meeting of the Board of the service of a prohibition order.

(3) The chief executive shall, in the interest of public health and consumer protection, make such arrangements as he or she considers necessary or appropriate to—

(a) bring the matter giving rise to the prohibition notice to the attention of the public,

(b) notify (by means of any agreed mechanism for doing so, where such a mechanism exists) the competent regulatory authorities in other countries where the food is on sale or is or has been distributed for sale of the prohibition order.

(4) A prohibition order shall take effect—

(a) where the order so declares, immediately the notice is received by the person on whom it is served,

(b) in any other case—

(i) where no appeal is taken against the prohibition order, on the expiration of the period during which such an appeal may be taken or the day specified in the prohibition order as the day on which it is to come into effect, whichever is the later, or

(ii) in case such an appeal is taken, on the day next following the day on which the prohibition order is confirmed on appeal or the appeal is withdrawn or the day specified in the prohibition order as that on which it is to come into effect, whichever is the later.

(5) The bringing of an appeal against a prohibition order which is to take effect in accordance with paragraph (4)(a) shall not have the effect of suspending the operation of the prohibition order, but the appellant may apply to the Court to have the operation of the prohibition order suspended until the appeal is disposed of and, on such application, the Court may, if it thinks proper to do so, direct that the operation of the prohibition order be suspended until the appeal is disposed of.

(6) (a) A person who is aggrieved by a prohibition order may, within the period of 7 days

beginning on the day on which the prohibition order is served on him or her, appeal against the order to a judge of the District Court in the district court district in which the prohibition order was served in the prescribed manner and in determining the appeal the judge may—

- (i) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the prohibition order, with or without modification, or
- (ii) cancel the prohibition order.

(b) Where on the hearing of an appeal under this paragraph a prohibition order is confirmed, notwithstanding paragraph (4) the judge of the District Court by whom the appeal is heard may, on the application of the appellant, suspend the operation of the prohibition order for such period as in the circumstances of the case the district judge considers appropriate.

(7) A person who appeals against a prohibition order or who applies for a direction suspending the application of the prohibition order under paragraph (5) shall at the same time notify the Authority or official agency of the appeal or the application and the grounds for the appeal or the application and the Authority or official agency shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(8) The chief executive or other person, being an employee of the Authority, or member of the Board, authorised by the Board in this connection, may, for stated reasons, revoke or vary a prohibition order made in accordance with this Regulation and the Board shall be notified at the next available meeting of the Board of any such revocation or variation and the reasons therefore.

(9) (a) Where a prohibition order has been served and activities are carried on in contravention of the prohibition order, the High Court may, on the application of an authorised officer, by order prohibit the continuance of the activities.

(b) An application to the High Court for an order under this paragraph shall be by motion and the Court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate and the order by which an application under this paragraph is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

PART 5 SANCTIONS

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

(2) Paragraph (1) shall not apply to an authorised officer or an approved examiner 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 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, an address or corroborative evidence which is false or misleading.

22. 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.

23. (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 food legislation or required for the purposes of these Regulations or food legislation (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 utters knowing it to be so altered, a certificate of analysis or other document issued, granted or given under these Regulations or food legislation, or required for the purposes of these Regulations or food legislation (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 thing with the result that a sample taken pursuant to these Regulations or food legislation does not correctly represent the substance sampled, or

(b) tampers or interferes with any sample taken under these Regulations or food legislation.

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

24. (1) 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.

(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) 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.

(4) An order for costs and expenses under subsection (3) is in addition to, and not instead of, any fine or penalty the court may impose under subsection (2).

25. 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 6 REVOCATIONS

26. (1) The following are revoked:

(a) the European Communities (Official Control of Foodstuffs) Regulations, 1998 as amended (S.I. No. 85 of 1998),

(b) the European Communities (Official Control of Foodstuffs) (Approved Laboratories) Order, 1998 (S.I. No. 95 of 1998),

(c) the European Communities (Official Control of Foodstuffs) (Approved Examiners) Order, 1998 (S.I. No. 465 of 1998), and

(d) the European Communities (Official Control of Foodstuffs) (Amendment) Regulations, 1999 (S.I. No. 210 of 1999).

(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 (Official Control Of 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.....

was submitted to me by you and I certify that the sample was prepared and analysed/examined by me or under my direction (4)

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. Executive Analytical Chemist located at a Public Analyst's Laboratory).

(3) Insert particulars of marking (e.g. name, date etc.) and the weight or measure (this may be left unanswered if the sample cannot be conveniently weighed or measured or if the weight or measurement is not material to the result of analysis).

(4) Indicate whether the approved examiner carried out the analysis himself or herself or whether it was carried out by another under the direction of the approved examiner.

(5) Here the approved examiner should specify the result of the analysis having regard to the provisions of the 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,

22 March 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 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. These Regulations revoke and replace the European Communities (Official Control of Foodstuffs) Regulations, 1998 (S.I. No. 85 of 1998), the European Communities (Official Control of Foodstuffs) (Approved Laboratories) Order, 1998 (S.I. No. 95 of 1998), the European Communities (Official Control of Foodstuffs) (Approved Examiners) Order, 1998 (S.I. No. 465 of 1998), and the European Communities (Official Control of Foodstuffs) (Amendment) Regulations, 1999 (S.I. No. 210 of 1999).

These Regulations may be cited as the European Communities (Official Control of Foodstuffs) 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 31, 1.2.2002, p. 1.

© Government of Ireland. Oireachtas Copyright Material is reproduced with the permission of the House of the Oireachtas