

## **S.I. No. 344/2011 — European Communities (Official Control of Foodstuffs) (Amendment) Regulations 2011.**

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 8th July, 2011.*

I, JAMES REILLY, Minister for Health, 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 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>, hereby make the following regulations:

1. (1) These Regulations may be cited as the European Communities (Official Control of Foodstuffs) (Amendment) Regulations 2011.

(2) The Principal Regulations and these Regulations may be cited together as the European Communities (Official Control of Foodstuffs) Regulations 2010 and 2011 and shall be construed together as one.

(3) These Regulations come into operation on 1 July 2011.

2. In these Regulations, “Principal Regulations” means the European Communities (Official Control of Foodstuffs) Regulations 2010 ( S.I. No. 117 of 2010 ).

3. The Principal Regulations are amended—

(a) by inserting the following after Regulation 13:

“13A.(1) In the event of non-compliance with food legislation leading to official controls exceeding the normal control activities, the Authority or the official agency, as the case may be, shall, pursuant to Article 28 of the EC Regulation, charge—

(a) the food business operator or operators responsible for the non-compliance, or

(b) the food business operator or operators owning or keeping the food at the time when the additional official controls are carried out,

for the expenses arising from the additional official controls.

(2) When setting the level of expenses referred to in paragraph (1), the Authority or the official agency, as the case may be, shall take account of the principles laid down in Article 27 of the EC Regulation.

(3) The food business operator or operators referred to in paragraph (1)(a) and (b), shall pay the charges imposed pursuant to paragraph (1).

(4) A charge 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.

(5) 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.

(6) The Public Offices Fees Act 1879 (42 & 43 Vict. Cap 58) does not apply to a charge imposed pursuant to this Regulation.”

(b) by inserting the following after Regulation 20:

“20A.(1) The Authority or the official agency, as the case may be, shall, pursuant to Article 54 of the EC Regulation, charge the responsible food business operator for all expenditure incurred pursuant to enforcement measures undertaken pursuant to this Part, other food

legislation or the Act of 1998.

(2) A charge 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.

(3) 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.

(4) The Public Offices Fees Act 1879 (42 & 43 Vict. Cap 58) does not apply to a charge imposed pursuant to this Regulation.

(5) The Authority or the official agency, as the case may be, may order that any food or other product be destroyed, or otherwise disposed of, where a food business operator has failed to pay a charge imposed pursuant to this Regulation in relation to said food or product and the Authority or official agency forms the view that the food or product has been abandoned.”

(c) in Regulation 21(3), by inserting after subparagraph (e) the following:

“(f) fails to pay a charge payable pursuant to Regulation 13A.

(g) fails to pay a charge payable pursuant to Regulation 20A.”

(d) in Regulation 21, by inserting after paragraph (3) the following:

“(4) In a prosecution for an offence under this Regulation the onus of proving that a charge pursuant to Regulation 13A or Regulation 20A has been paid lies on the defendant.”

L.S.

Signed,

30 June 2011.

JAMES REILLY,

Minister for Health.

#### 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 Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004 as regards the collection of charges to cover expenses incurred in carrying out additional official controls and enforcement measures in cases of non-compliance.

These Regulations amend the European Communities (Official Control of Foodstuffs) Regulations 2010 ( S.I. No. 117 of 2010 ) in the manner specified in these Regulations.

These Regulations may be cited as the European Communities (Official Control of Foodstuffs) (Amendment) Regulations 2011.

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.

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