

STATUTORY INSTRUMENTS.

S.I. No. 390 of 2000.

**EUROPEAN COMMUNITIES (LIVE BIVALVE MOLLUSCS) (HEALTH
CONDITIONS FOR PRODUCTION AND PLACING ON THE MARKET)
(AMENDMENT) REGULATIONS, 2000.**

I, FRANK FAHEY, Minister for the Marine and Natural Resources, 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 Council Directive 91/492/EEC of 15 July 1991⁽¹⁾, as amended by Council Directive 97/61/EC of 20 October 1997⁽²⁾, hereby make the following Regulations:

⁽²⁾ O.J. No. L.295, 29.10.97, p.35

⁽¹⁾ O.J. No. L.268, 24.9.91, p.1

1. These Regulations may be cited as the European Communities (Live Bivalve Molluscs) (Health Conditions for Production and Placing on the Market) (Amendment) Regulations, 2000.

2. In these Regulations "Principal Regulations" means European Communities (Live Bivalve Molluscs) (Health Conditions for Production and Placing on the Market) Regulations, 1996, (S.I. No. 147 of 1996).

3. Regulation 3 of the Principal Regulations is amended by the substitution for the definitions of "Council Directive" and "the Minister" of the following definitions:

"Council Directive' means Council Directive 91/492/EEC of 15 July 1991, as amended by Council Directive 97/61/EC of 20 October 1997⁽²⁾;

⁽²⁾ O.J. No. L.295, 29.10.97, p.35

'Minister' means Minister for the Marine and Natural Resources."

4. The following Regulation is inserted after Regulation 5 of the Principal Regulations:

"5A (1) The Minister may prohibit (in this Regulation referred to as a 'prohibition') any production or harvesting of bivalve molluscs or any species of bivalve mollusc in any production area designated under Regulation 8(1) or any other area of the sea which the Minister considers is unsuitable for these activities for health reasons.

(2) A prohibition may prohibit the placing on the market of any molluscs the subject of the prohibition harvested in the area to which the prohibition applies.

(3) A prohibition shall be published in *Iris Oifigiúil* and notice of the prohibition shall be published in one or more newspapers published in the State and circulating in the area affected.

(4) Any person aggrieved by a prohibition may make representations in writing to the Minister who shall consider them.

(5) The Minister may withdraw any prohibition or restrict its application.

(6) The Minister shall withdraw any prohibition where he or she considers that the area to which the prohibition relates has become suitable for the production or harvesting of bivalve molluscs the subject of the prohibition.

(7) Any withdrawal or restriction under paragraph (5) or (6) shall be published in *Iris Oifigiúil* and notice of the withdrawal or restriction shall be published in one or more newspapers published in the State and circulating in the area to which the prohibition relates.

(8) A person shall comply with any prohibition which is for the time being in force.

(9) The Minister may do such things as he or she considers necessary or appropriate or arrange to have such things done to bring a prohibition or any withdrawal or restriction of such prohibition to the attention of the public, including by means of the erection of a notice adjacent to or in the vicinity of any area to which the prohibition applies.

(10) An authorised officer may, for the purposes of erecting a notice under paragraph (9), at all reasonable times, enter upon land which is adjacent to or in the vicinity of an area to which a prohibition applies.

(11) A notice under paragraph (10) shall not, without the consent of the owner or occupier, be erected within the garden or curtilage of a domestic dwelling."

5. Regulation 8 of the Principal Regulations is amended by the substitution for paragraph (4) of the following paragraphs:

"(4) A designation or an approval under this Regulation shall be published in *Iris Oifigiúil* and notice of the designation or approval shall be published in one or more newspapers published in the State and circulating in the area affected.

(5) The Minister shall compile and maintain a list of any production areas designated under paragraph (1) and any relaying areas approved under paragraph (2).

(6) A person shall not take, in order to place on the market, a live bivalve mollusc other than from a production area which is designated under paragraph (1).

(7) A person shall not place on the market a bivalve mollusc which he or she knows or in the circumstances ought to have known has been taken from a production area which is not designated under paragraph (1).

(8) A person shall not purify any live bivalve mollusc in a relaying area which is not approved under paragraph (2)."

6. Regulation 14 of the Principal Regulations is hereby amended by the substitution for paragraph (1) of the following paragraph:

"(1) A person who contravenes or fails to comply with Regulation 5, 5A(8), 7(1), (8) or (10), 8(6) or (7), 9(1) or 10(1), (2) or (4) is guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500."

7. Regulation 11 of the Principal Regulations is amended by the insertion after paragraph (3) of the following paragraph:

"(4) A person who—

(a) obstructs or interferes with an authorised officer in the exercise of his or her powers under these Regulations, or

(b) fails to comply with any request from an authorised officer under this Regulation,

is guilty of an offence and shall be liable to a fine not exceeding £500".

8. The Principal Regulations are deemed to be food legislation for the purposes of the Food Safety of Ireland Act, 1998 (No. 29 of 1998).

(L.S.)

GIVEN under my Official Seal, this 30th day of November, 2000.

FRANK FAHEY T.D.,

Minister for the Marine and Natural Resources.

EXPLANATORY NOTE.

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

These Regulations make a number of amendments and additions to the European Communities (Live Bivalve Molluscs) (Health Conditions for Production and Placing on the Market) Regulations, 1996 (S.I. No. 147 of 1996).

The principal provisions include—

— conferral on the Minister for the Marine and Natural Resources of power to prohibit production or harvesting of live bivalve molluscs from a designated production area or any other area of the sea which the Minister considers is unsuitable for these activities for health reasons; and

—an increase from £1,500 of the maximum fine for certain specified offences, and the creation of an offence of obstructing or interfering with an authorised officer in the exercise of his or her powers.