

Statutory Instrument

S.I. No. 267 of 2003.

European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2003.

Dublin

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S.I. No. 267 of 2003

European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2003.

I, Micheál Martin, 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 Directive 85/591/EEC¹ of 20 December 1985 concerning the introduction of Community methods of sampling and analysis for the monitoring of foodstuffs intended for human consumption, and for the purposes of giving full effect to Commission Directive 98/53/EC² of 16 July 1998 laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs, as amended by Commission Directive 2002/27/EC³ of 13 March 2002, and for the purposes of giving full effect to Commission Directive 2001/22/EC⁴ of 8 March 2001 laying down the sampling methods and the methods of analysis for the official control of the levels of lead, cadmium, mercury and 3-MCPD in foodstuffs, and for the purposes of giving effect to Commission Directive 2002/26/EC⁵ of 13 March 2002 laying down the sampling methods and methods of analysis for the official control of the levels of ochratoxin A in foodstuffs and Commission Directive 2002/69/EC⁶ of 30 July 2002 laying down the sampling methods and the methods of analysis for the official control of dioxins and the determination of dioxin-like PCBs in foodstuffs, hereby make the following regulations:

⁶ OJ L 209, 6.8.2002, p. 5.

⁵ OJ L 75, 16.3.2002, p. 38.

⁴ OJ L 77, 16.3.2001, p. 14.

³ OJ L 75, 16.3.2002, p. 44.

² OJ L 201, 17.7.1998, p. 93.

¹ OJ L 372, 31.12.1985, p. 50.

1. These Regulations may be cited as the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2003 and they shall come into operation on 7 July 2003.

2. (1) In these Regulations:

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

"the Act of 1999" means the Health (Eastern Regional Health Authority) Act 1999 (No. 13 of 1999);

"approved examiner" for the purposes of these Regulations means:

(a) those persons referred to at paragraphs (i), (ii) and (iii) of Article 2 of the European Communities (Official Control of Foodstuffs) (Approved Examiners) Order 1998 (S.I. No. 465 of 1998),

(b) the State Chemist in the State Laboratory, and

(c) the Senior Chemist in the Institute;

"authorised officer" means -

(a) an authorised officer appointed under section 49 of the Act of 1998,

(b) in relation to the functional area of a health board, a person or a person belonging to a class of persons, authorised by the chief executive officer of the health board concerned to perform the functions of an authorised officer under these Regulations,

(c) a person authorised by the Minister for Agriculture and Food to be an authorised officer for the purposes of these Regulations,

(d) a person authorised by the Minister for Communications, Marine and Natural Resources to be an authorised officer for the purposes of these Regulations, or

(e) a person appointed as an authorised officer under the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2001 (S.I. No. 401 of 2001) and holding office as an authorised officer under those Regulations immediately before the coming into operation of these Regulations;

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

"the Directives" means Commission Directive 98/53/EC⁷ of 16 July 1998 laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs as amended by Commission Directive 2002/27/EC⁸ of 13 March 2002, and Commission Directive 2001/22/EC⁹ of 8 March 2001 laying down the sampling methods and the methods of analysis for the official control of the levels of lead, cadmium, mercury and 3-MCPD in foodstuffs, and Commission Directive 2002/26/EC¹⁰ of 13 March 2002 laying down the sampling methods and methods of analysis for the official control of the levels of ochratoxin A in foodstuffs, and Commission Directive 2002/69/EC¹¹ of 30 July 2002 laying down the sampling methods and the methods of analysis for the official control of dioxins and the determination of dioxin-like PCBs in foodstuffs;

¹¹ OJ L 209, 6.8.2002, p. 5.

¹⁰ OJ L 75, 16.3.2002, p. 38.

⁹ OJ L 77, 16.3.2001, p. 14.

⁸ OJ L 75, 16.3.2002, p. 44.

⁷ OJ L 201, 17.7.1998, p. 93.

"foodstuff" means any substance or product, whether processed, partially processed or unprocessed, intended to be, or reasonably expected to be ingested by humans. 'Foodstuff' includes drink, chewing gum and any substance, including water,

intentionally incorporated into the food during its manufacture, preparation or treatment. It includes water after the point of compliance as defined in Article 6 of Directive 98/83/EC¹² and without prejudice to the requirements of Directives 80/778/EEC¹³ and 98/83/EC¹⁴;

¹⁴ OJ L 330, 5.12.1998, p. 32.

¹³ OJ L 229, 30.8.1980, p. 11.

¹² OJ L 330, 5.12.1998, p. 32.

"foodstuff" shall not include:

(a) feed,

(b) live animals unless they are prepared for placing on the market for human consumption,

(c) plants prior to harvesting,

(d) medicinal products within the meaning of Council Directives 65/65/EEC¹⁵ and 92/73/EEC¹⁶

¹⁶ OJ L 297, 13.10.1992, p.8.

¹⁵ OJ 22, 9.2.1965, p. 369. Directive as last amended by Directive 93/39/EEC (OJ L 214, 24.8.1993, p.22).

(e) cosmetics within the meaning of Council Directive 76/768/EEC¹⁷,

¹⁷ OJ L 262, 27.9.1976, p.169. Directive as last amended by Commission Directive 2000/41/EC (OJ L 145, 20.6.2000, p.25).

(f) tobacco and tobacco products within the meaning of Council Directive 89/622/EEC¹⁸,

¹⁸ OJ L 359, 8.12.1989, p.1. Directive as last amended by Directive 92/41/EEC (OJ L 158, 11.6.1992, p.30)

(g) narcotic or psychotropic substances within the meaning of the United Nations Single Convention on Narcotic Drugs, 1961, and the United Nations Convention on Psychotropic Substances, 1971, or

(h) residues and contaminants;

"functional area" means

(a) in relation to a health board established under section 4 of the Health Act 1970 (No. 1 of 1970), the functional area of the health board as specified in the Health Boards Regulations 1970 (S.I. No. 170 of 1970),

(b) in relation to an Area Health Board established by section 14(1) of the Act of 1999, the functional area of each Area Health Board as specified in section 14(4) of the Act of 1999;

"functions" includes powers and duties and references to the performance of functions include references to the exercise of powers and the performance of duties;

"health board" means

(a) a board established under section 4 of the Health Act 1970 (No. 1 of 1970), or

(b) an Area Health Board established by section 14(1) of the Act of 1999;

"the 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 control of foodstuffs" hereinafter called "control of foodstuffs" means an inspection by authorised officers of the compliance of:

- (a) foodstuffs,
- (b) food additives, vitamins, mineral salts, trace elements and other additives intended to be sold as such, or
- (c) materials and articles intended to come into contact with food, with provisions aimed at preventing risks to public health, guaranteeing fair commercial transactions or protecting consumer interests, including the provision of consumer information;

"official laboratory" for the purposes of these Regulations means

- (a) the Public Analyst's Laboratory, Dublin,
- (b) the Public Analyst's Laboratory, Cork,
- (c) the Public Analyst's Laboratory, Galway,
- (d) the State Laboratory, or
- (e) the Institute.

(2) A word or expression that is used in these Regulations and that is also used in the Directives has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directives.

(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 Regulation 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.

3. (1) Sampling for the official control of the levels of aflatoxins in foodstuffs shall be carried out in accordance with the methods described in Annex I of Commission Directive 98/53/EC¹⁹ as amended by Commission Directive 2002/27/EC²⁰.

²⁰ OJ L 75, 16.3.2002, p. 44.

¹⁹ OJ L 201, 17.7.1998, p. 93.

(2) Sample preparation and methods of analysis used for the official control of the levels of aflatoxins in foodstuffs shall comply with the criteria described in Annex II of Commission Directive 98/53/EC²¹ as amended by Commission Directive 2002/27/EC²².

²² OJ L 75, 16.3.2002, p. 44.

²¹ OJ L 201, 17.7.1998, p. 93.

4. (1) Sampling for the official control of the levels of lead, cadmium, mercury and 3-MCPD in foodstuffs shall be carried out in accordance with the methods described in Annex I of Commission Directive 2001/22/EC²³.

²³ OJ L 77, 16.3.2001, p. 14.

(2) Sample preparation and methods of analysis used for the official control of the levels of lead, cadmium, mercury and 3-MCPD in foodstuffs shall comply with the criteria described in Annex II of Commission Directive 2001/22/EC²⁴.

²⁴ OJ L 77, 16.3.2001, p. 14.

5. (1) Sampling for the for the official control of the levels of ochratoxin A in foodstuffs shall be carried out in accordance with the methods described in Annex I of Commission Directive 2002/26/EC²⁵.

²⁵ OJ L 75, 16.3.2002, p. 38.

(2) Sample preparation and methods of analysis used for the official control of the levels of ochratoxin A in foodstuffs shall comply with the criteria described in Annex II of Commission Directive 2002/26/EC²⁶.

²⁶ OJ L 75, 16.3.2002, p. 38.

6. (1) Sampling for the official control of the levels of dioxins and furans and the determination of the levels of dioxin-like PCBs in foodstuffs shall be carried out in accordance with the methods described in Annex I of Commission Directive 2002/69/EC²⁷

²⁷ OJ L 209, 6.8.2002, p. 5.

(2) Sample preparation and methods of analysis used for the official control of the levels of dioxins and furans and the determination of the levels of dioxin-like PCBs in foodstuffs shall comply with the criteria described in Annex II of Commission Directive 2002/69/EC²⁸.

²⁸ OJ L 209, 6.8.2002, p. 5.

7. Control of the foodstuffs affected by these Regulations shall be carried out in accordance with the provisions of these Regulations.

8. These Regulations shall be enforced by the Authority.

9. (1) These Regulations shall be deemed to be food legislation for the purposes of the Act of 1998 and, subject to Regulation 7, the enforcement provisions contained in that Act shall accordingly apply for the purposes of ensuring compliance with these Regulations.

(2) In particular, authorised officers acting under these Regulations shall enjoy the powers conferred on authorised officers by the Act of 1998.

10. (1) Without prejudice to Regulations 7 and 9, and save insofar as they are inconsistent with the requirements of these Regulations, the provisions of the European Communities (Official Control of Foodstuffs) Regulations 1998 (S.I. No. 85 of 1998), as amended, shall apply for the purpose of ensuring compliance with these Regulations.

(2) In particular, authorised officers and approved examiners acting under these Regulations shall have the same powers as authorised officers and approved examiners acting under the said Regulations of 1998, save insofar as such powers are inconsistent with the requirements of these Regulations.

(3) Without prejudice to the generality of paragraph (1), Regulations 13 and 14 of the said Regulations of 1998 shall not apply for the purposes of ensuring compliance with these Regulations.

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

11. 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.

12. (1) The chief executive officer of a health board may appoint in writing such and so many officers of the health board as he or she thinks fit to be authorised officers for the purposes of ensuring compliance with these Regulations in the functional area of the health board.

(2) The Minister for Agriculture and Food may appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of ensuring compliance with these Regulations.

(3) The Minister for Communications, Marine and Natural Resources may appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of ensuring compliance with these Regulations.

(4) A person appointed as an authorised officer under the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2001 (S.I. No. 401 of 2001) and holding office as an authorised officer immediately before the coming into operation of these Regulations shall continue in office as if appointed under these Regulations.

(5) An authorised officer shall be furnished with a certificate of his or her appointment as an authorised officer and when exercising any power conferred on an authorised officer under these Regulations, shall, if requested by any person affected, produce the certificate to that person.

13. Where a sample of a foodstuff is taken pursuant to these Regulations:

(1) the authorised officer shall, in the presence of the owner or person in apparent charge or control of such foodstuff, 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 cannot be compromised and forward it to an approved examiner in an official laboratory for analysis;

(2) as soon as is reasonably practicable after he or she has received such a sample, the approved examiner or a person acting under his or her direction shall issue to the owner or person in apparent charge or control of the foodstuff, a certificate in the form set out in Schedule 2 to these Regulations, or a certificate in like form, confirming that the integrity of the sample had been preserved;

(3) the approved examiner or a person acting under his or her direction shall prepare and sub-divide the sample in accordance with Regulations 3(2), 4(2), 5(2) and 6(2);

(4) the trade (defence) sample shall be marked in such a way as to identify it as a part of the sample taken by the authorised officer and shall be forwarded to the owner or person in apparent charge or control of the foodstuff in such a way that the integrity of the sample cannot be compromised.

14. The following persons shall be approved examiners for the purposes of these Regulations:

(a) those persons referred to at paragraphs (i), (ii) and (iii) of Article 2 of the European Communities (Official Control of Foodstuffs) (Approved Examiners) Order 1998 (S.I. No. 465 of 1998),

(b) the State Chemist in the State Laboratory, and

(c) the Senior Chemist in the Institute.

15. (1) The approved examiner, or a person acting 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 1 to these Regulations, or a certificate in like form, shall be completed.

(3) An official certificate given in accordance with paragraph (1) may be adduced in evidence in a prosecution and shall be *prima facie* evidence of the matters contained therein, until the contrary is proved.

16. Where a sample of a foodstuff is taken by an authorised officer in pursuance of these Regulations for analysis by an approved examiner, and where the owner or person in apparent charge or control of such foodstuff requests in writing the results of such analysis, the request shall be made to the health board in whose functional area the sample was taken, or to the State Laboratory, or to the Institute, or to the Authority, and the health board, or the State Laboratory, or the Institute, or the Authority shall comply with such request.

17. (1) A person who-

(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 requirement under these Regulations,

(c) fails to comply with a request 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 requirement under these Regulations a name, an address or corroborative evidence which is false or misleading shall be guilty of an offence.

(2) A person who is guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding €1,900 or at the discretion of the Court to imprisonment for a term not exceeding six months or both.

18. Where an offence under these Regulations is committed by a body corporate or by a person acting on behalf of a body corporate and is proved to have been so committed with the consent, connivance or approval of, or to be attributed to any neglect or default on the part of, any director, manager, secretary or any other officer of such body, or a person who was purporting to act in any such capacity, such person shall also be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

19. An offence under these Regulations may be prosecuted by-

(1) the Authority,

(2) a health board within whose functional area the offence was committed,

(3) the Minister for Agriculture and Food, or

(4) the Minister for Communications, Marine and Natural Resources.

20. (1) Any person who forges, or utters knowing it to be forged, a certificate or other document purporting to be issued, granted or given under these Regulations (hereafter in this Regulation referred to as "a forged document"), is guilty of an offence.

(2) Any person who alters with intent to defraud or deceive, or who utters knowing it to be so altered, a certificate or other document issued, granted or given under these Regulations (hereafter in this Regulation referred to as "an altered document"), is guilty of an offence.

(3) Any person who, without lawful authority, has in his or her possession a forged document or an altered document is guilty of an offence.

(4) Any person who, with intent to defraud or deceive —

(a) tampers with any thing so as to procure that any 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

is guilty of an offence.

21. (1) The European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2001 (S.I. No. 401 of 2001) are revoked.

(2) References in any other instrument to the Regulations revoked under paragraph (1) shall be construed as references to these Regulations, as appropriate.

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

European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2003

Certificate of Analysis

To ⁽¹⁾

I, the undersigned ⁽²⁾

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

theday 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 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 effect 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 in the 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.

Form of official certificate to be issued by an approved examiner, or by a person acting under his or her direction, to the owner or person in apparent charge or control of a foodstuff in respect of which a sample was taken pursuant to these Regulations

European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of Certain Contaminants in Foodstuffs) Regulations 2003

Certificate of Integrity of Sample

To ⁽¹⁾

I, the undersigned ⁽²⁾

being an Approved Examiner for the purposes of the above Regulations, or a person acting under the direction of an Approved Examiner⁽³⁾, certify that on

theday of 20

a sample marked ⁽⁴⁾

Date

Numbers

Weight or Measure ⁽⁵⁾

was submitted to me by an authorised officer⁽⁶⁾ and I certify that the sample 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 ⁽⁷⁾

Name in BLOCK LETTERS

Status

Signature

Official Stamp

NOTES

(1) Insert the name and address of the owner or person in apparent charge or control of the foodstuff.

(2) Insert description (e.g. Senior Chemist in the Institute).

(3) Delete as appropriate.

(4) Insert particulars of marking (e.g. name, date etc.).

(5) This may be left unanswered if the sample cannot be conveniently weighed or measured.

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

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



Given under the Official Seal of the Minister for Health and Children this 26 day of June, 2003.

Micheál Martin

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 Directive 98/53/EC of 16 July 1998 laying down the sampling methods and the methods of analysis for the official control of the levels for certain contaminants in foodstuffs, as amended by Commission Directive 2002/27/EC of 13 March 2002, and Commission Directive 2001/22/EC of 8 March 2001 laying down the sampling methods and the methods of analysis for the official control of the levels of lead, cadmium, mercury and 3-MCPD in foodstuffs, and Commission Directive 2002/26/EC of 13 March 2002 laying down the sampling methods and methods of analysis for the official control of the levels of ochratoxin A in foodstuffs, and Commission Directive 2002/69/EC of 30 July 2002 laying down the sampling methods and the methods of analysis for the official control of dioxins and the determination of dioxin-like PCBs in foodstuffs.

The principal effect of these Regulations is to provide for 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 in accordance with the methods described in the Annexes of the Directives.

These Regulations may be cited as the European Communities (Sampling Methods and Methods of Analysis for the Official Control of the Levels of

Certain Contaminants in Foodstuffs) Regulations 2003, and they come into effect on 7 July 2003.

Copies may be obtained from the Government Publications Sale Office, Sun Alliance House, Molesworth Street, Dublin 2 or by mail order from Government Publications, Postal Trade Section, 51 St. Stephen's Green, Dublin 2, Fax: 01-6476843. Price €3.05

DEPARTMENT OF HEALTH AND CHILDREN.

June, 2003.