



STATUTORY INSTRUMENTS

S.I. No. 140 of 2009



EUROPEAN COMMUNITIES (MARKETING STANDARDS FOR EGGS)
REGULATIONS 2009

(Prn. A9/0513)

EUROPEAN COMMUNITIES (MARKETING STANDARDS FOR EGGS)
REGULATIONS 2009

I, BRENDAN SMITH, Minister for Agriculture, Fisheries and Food, 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 effect to Council Regulation (EC) No. 1234/2007 of 22 October 2007¹ as amended by Council Regulation (EC) No. 361/2008 of 14 April 2008² in as far as it concerns eggs and to Commission Regulation (EC) No. 589/2008 of 23 June 2008³ as amended by Commission Regulation (EC) No. 598/2008 of 24 June 2008⁴, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Marketing Standards for Eggs) Regulations 2009.

Interpretation

2. (1) In these Regulations—

“authorised officer” means—

(a) a person appointed under Regulation 5, or

(b) a person who, immediately before the making of these Regulations, was an authorised officer within the meaning of the European Communities (Marketing Standards for Eggs) Regulations 2007 (S.I. No. 810 of 2007);

‘Commission Regulation’ means Commission Regulation (EC) No. 589/2008 of 23 June 2008 as amended by Commission Regulation (EC) No. 598/2008 of 24 June 2008;

‘Council Regulation’ means Council Regulation (EC) No. 1234/2007 of 22 October 2007 as amended by Council Regulation (EC) No. 361/2008 of 14 April 2008;

“Minister” means Minister for Agriculture, Fisheries and Food;

“premises” includes land, buildings, vehicle, wagon, aircraft and vessel.

(2) A word or expression that is used in these Regulations and is also used in the Council Regulation or the Commission Regulation has the same meaning

¹O.J. No. L 299 of 16.11.2007, p.1.

²O.J. No L 121 of 7.5.2008, p.1

³O.J. No. L 163 of 24.6. 2008, p. 6

⁴O.J. No L 164 of 25.6.2008, p. 14

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 17th April, 2009.*

in these Regulations as it has in the Council Regulation or in the Commission Regulation.

(3) These Regulations do not apply to eggs sold directly by a producer to the final consumer in accordance with part A.I.2 of Annex XIV of the Council Regulation provided that, if the producer has a flock of more than 50 hens, the eggs are marked with the producer code or, if the producer has a flock of up to 50 hens, the name and address of the producer are indicated at the point of sale.

Compliance with Regulations

3. (1) A person shall not market eggs to which the Council Regulation or the Commission Regulation apply unless they comply with all the requirements of those Regulations applicable to them and they are marketed in compliance with those Regulations.

(2) A person shall not operate a packing centre unless the centre is authorised for the purposes of Article 5(2) of the Commission Regulation.

(3) A person shall not grade, pack or label eggs except in an authorised packing centre.

(4) A person shall not collect eggs unless he or she is registered as a collector under the European Communities (Food and Feed Hygiene) Regulations 2005 (S.I. No. 910 of 2005).

(5) A person shall not market eggs unless the eggs have been produced in an establishment that is registered in the register maintained pursuant to Regulation 10 of the European Communities (Welfare of Farmed Animals) Regulations 2008 (S.I. No. 14 of 2008).

(6) A person shall not market eggs described or labelled as “free range” or “barn” or that bear an indication of how the laying hens are fed unless the eggs have been produced under and in accordance with an approval under Regulation 4.

(7) A person shall not market Class B eggs unless they are marked with the producer code and with one of the indications described in Article 10 of the Commission Regulation unless such eggs are being marketed exclusively within the State.

Authorisations and approvals

4. (1) The Minister may authorise a packing centre if the Minister is satisfied that it has premises and technical equipment that are suitable for the purposes of the Council Regulation and the Commission Regulation.

(2) The Minister may enter the name and address of a person on the register of authorised packing centres and on the register of approved free range producers, barn producers or producers of eggs that bear an indication of how the hens were fed, refuse an application or revoke an entry in the register.

(3) An application for authorisation shall be made in a form, be accompanied by any material and contain any particulars that the Minister specifies.

(4) The Minister shall not consider an application if the application does not contain all the material and particulars sought by the Minister.

(5) The Minister may attach conditions to an authorisation, revoke or vary a condition or attach a new condition.

(6) Without prejudice to the generality of paragraph (2) the Minister may refuse an application or revoke an authorisation if—

- (a) he or she is satisfied that the applicant or registered person has failed to comply with a condition of authorisation,
- (b) an application or authorisation relates to a packing centre that is not approved under the European Communities (Food and Feed Hygiene) Regulations 2005,
- (c) the Council Regulation, the Commission Regulation or these Regulations has not been complied with,
- (d) the applicant or registered person is not, in the opinion of the Minister, a fit and proper person to be authorised, or
- (e) in relation to paragraph (3), information required has not been furnished or information that is, in the opinion of the Minister, false or misleading in a material particular has been furnished.

(7) If the Minister proposes to revoke an authorisation or to refuse an application he or she shall—

- (a) notify the holder of the authorisation in writing of the proposal and of the reasons for the proposal and that he or she may make representations to the Minister in relation to the proposal within 14 days of the date of the notification,
- (b) consider representations made before deciding whether to proceed with, modify or annul the proposal, and
- (c) notify the person in writing of the decision and the reasons for the decision.

(8) A person to whom an authorisation is granted shall make such returns to the Minister as and when, and in a form that, the Minister may specify.

Authorised officers

5. (1) The Minister may, by instrument in writing, appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of some or all of these Regulations.

(2) The Minister may terminate the appointment of an authorised officer appointed by him or her, whether or not the appointment was for a fixed period.

(3) An appointment as an authorised officer ceases—

(a) if it is terminated pursuant to paragraph (2),

(b) if it is for a fixed period, on the expiry of that period, or

(c) if the person appointed is an officer of the Minister, upon the person ceasing to be such an officer.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph applies.

(5) An officer of the Minister shall furnish an authorised officer with a warrant of appointment as an authorised officer and when exercising any power conferred on him or her by these Regulations such officer shall, if requested by a person affected, produce the warrant to that person.

Functions of authorised officer

6. (1) If an authorised officer has reasonable cause to suspect that—

(a) eggs are being marketed, produced, stored, packed, graded, marked, handled, imported or exported on a premises,

(b) an application for an authorisation under Regulation 4 has been or should be made in respect of the premises, or

(c) a document, label or packaging relating to eggs is present, was present or may be present on a premises, the authorised officer may enter the premises and he or she may—

(i) search the premises,

(ii) stop a person, vehicle, vessel or container,

(iii) board and search a vehicle, vessel or container,

(iv) examine eggs, vehicle, vessel, container or other thing that may be used in connection with eggs,

(v) take, without payment, samples of eggs, feed or other thing or an article, substance or liquid as he or she may reasonably require and carry out or cause to be carried out on a sample such tests, analyses, examinations or inspections as he or she considers necessary or expedient,

(vi) require the production of a document or thing relating to eggs, feed, vehicle, vessel, container, premises or other thing,

- (vii) retain a document or thing (for so long as is necessary),
- (viii) give a direction to, or request information of, a person regarding eggs, feed, vessel, vehicle, container, premises or other thing as he or she considers necessary,
- (ix) require the name and address of a person and the name and address of any other relevant person,
- (x) require of a person the ownership, identity and origin of eggs, or
- (xi) mark or otherwise identify eggs or a sample taken under subparagraph (v).

(2) If an authorised officer has reasonable cause to suspect that—

- (a) an offence is being or has been committed under these Regulations, or
- (b) evidence of an offence is or has been on a premises—

the authorised officer may, in addition to the powers exercisable by him or her under paragraph (1)—

- (i) search a person, where the authorised officer considers it necessary,
- (ii) seize and detain eggs, labels, packaging, document or other thing that he or she believes to be evidence of an offence, or
- (iii) deal with or dispose of eggs or require the owner or person in charge of or in possession of eggs to deal with or dispose of them in a manner that the authorised officer sees fit.

(3) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 7.

(4) An authorised officer may use reasonable force, if necessary, in exercise of his or her powers under this Regulation.

(5) An authorised officer, when exercising a power under this Regulation may be accompanied by other persons and may take with him or her, or those persons may take with them, any equipment or materials to assist the officer in the exercise of the power.

(6) An authorised officer is not liable in any proceedings for anything done in the purported exercise of his or her powers under these Regulations if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

(7) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions prohibiting,

restricting or otherwise controlling the movement or marketing of eggs as may be specified by the authorised officer.

(8) Nothing in this Regulation operates to prejudice any power to search, or to seize or detain property, which may, apart from these Regulations, be exercised by a member of the Garda Síochána or an officer of Customs and Excise.

(9) If a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

Search warrant

7. (1) If a judge of the District Court is satisfied by information on oath of an authorised officer that there are reasonable grounds for suspecting—

- (a) evidence of, or relating to, the commission or intended commission of an offence under these Regulations is to be found on a premises,
- (b) there is or was eggs or labels, packaging, equipment or other thing used in connection with eggs or a premises,
- (c) a document or other record related to a thing to which subparagraph (a) or (b) refers is or may be on the premises,

the judge may issue a search warrant.

(2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the premises, vehicle, vessel or aircraft named in the warrant.

(3) If a premises is entered pursuant to a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

Compliance notice

8. (1) If an authorised officer is of the opinion that eggs are being or have been dealt with in a manner that is not in accordance with the Council Regulation, the Commission Regulation or these Regulations he or she may serve or cause to be served on the owner or person in charge of the eggs a notice (“compliance notice”) stating that opinion and directing that—

- (a) the eggs not be marketed,
- (b) such action be taken, in the manner if any specified in the notice, as is necessary to make the eggs comply with the Council Regulation, the Commission Regulation or these Regulations and that proof of such compliance be provided to the officer,

- (c) the eggs be destroyed in such manner and at such place, if any, as the officer shall direct, or
 - (d) the eggs be used or disposed of in such manner as the officer shall direct.
- (2) A person shall not contravene a compliance notice.
- (3) A compliance notice may specify one or more requirements.
- (4) A requirement contained in a compliance notice may specify a time limit within which it is to be complied with.
- (5) A compliance notice may require the owner or person in charge of eggs to choose between two or more of the requirements specified in the notice.
- (6) A requirement specified in a compliance notice (in this Regulation referred to as “the earlier notice”) may be modified or withdrawn in a further compliance notice and in that event the earlier notice shall have effect subject to such modification or withdrawal.
- (7) A person, including a person upon whom a compliance notice is served, shall not deal with eggs to which the notice relates other than in accordance with the terms of the notice.
- (8) In the event of an appeal made pursuant to Regulation 10 a person, including the person appealing, shall not deal with eggs to which a compliance notice relates pending the determination of the appeal other than in accordance with such directions as shall be given in writing to the appellant by an authorised officer.
- (9) If the terms of a compliance notice are confirmed with or without modification by the Judge of the District Court hearing an appeal under Regulation 10, a person including the person who made the appeal shall not deal with eggs to which the notice relates other than in accordance with the notice as confirmed.
- (10) Any costs pertaining to action required to comply with a compliance notice will be borne by the owner of the eggs to which the notice relates.

Service of compliance notice

9. (1) A compliance notice shall, subject to paragraph (2), be addressed to the person concerned by name and may be served on a person—

- (a) by giving it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or, where an address for service has been furnished, at that address,

- (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, where an address for service has been furnished, at that address, or
- (d) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance notice relates to a premises, by delivering it to the premises or by affixing it in a conspicuous position on or near the premises.

(2) If a compliance notice is to be served on a person who is the owner or person in charge of eggs and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to that person by using the words “the owner” or “the person in charge”.

(3) A person shall not, at any time within 6 months after a compliance notice is affixed under paragraph (1)(d), remove, damage or deface the notice without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Acts is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

Appeal against compliance notice.

10. (1) A person may appeal within 7 days of the service of a compliance notice to the Judge of the District Court having jurisdiction in the District Court District where the eggs to which the notice relates is situated or to the Judge of the District Court where the person bringing the appeal ordinarily resides or carries on business on the grounds that the notice or any terms thereof are not justified having regard to the Council Regulation, the Commission Regulation or these Regulations (“an appeal”).

(2) An appeal may be heard at any sitting of the District Court within the appropriate District Court District.

(3) Notice of an appeal shall be served on the Minister at least 2 days prior to the hearing of the appeal by serving it on the Minister or by leaving it at the place and in the manner specified in the compliance notice.

(4) A notice of appeal shall contain a statement of the grounds upon which it is alleged that the notice or any of the terms thereof are not justified.

(5) A copy of the notice of appeal shall be lodged with the District Court Clerk in the manner specified in the compliance notice (if any) at least 2 days prior to the hearing of the appeal.

(6) On the hearing of an appeal under this Regulation a Judge of the District Court may confirm, modify or annul a compliance notice.

Power to seize and dispose of eggs

11. (1) Without prejudice to Regulation 6 or 8, if—
- (a) the owner or person in charge of eggs fails to comply with the terms of a compliance notice within the time limit specified therein,
 - (b) an authorised officer has reasonable grounds for believing that the terms of a compliance notice will not be complied with,
 - (c) a compliance notice has been confirmed with or without modification under Regulation 10 and the notice has not been complied with,
 - (d) an authorised officer has reasonable grounds for believing that the terms of a compliance notice which has been confirmed with or without modification under Regulation 10 will not be complied with, or
 - (e) pending the determination of an appeal made pursuant to Regulation 10, an authorised officer has reasonable grounds for believing that a compliance notice or a direction given pursuant to Regulation 6 have not been or will not be complied with,

an authorised officer may at any time seize the eggs at such premises as he or she thinks fit.

(2) An authorised officer may sell or dispose of seized eggs or cause them to be sold or be otherwise disposed of or destroyed in such manner and at such place as the authorised officer considers appropriate in the circumstances of the case.

(3) Any profits arising out of the sale or disposal of eggs under this Regulation shall be paid to the owner of the eggs less any expenses incurred in connection with seizure, sale, disposal or destruction of the eggs.

(4) The costs (including ancillary costs) of seizure, maintenance, sale, disposal or destruction of eggs under this Regulation or Regulation 6 are, subject to paragraph (3), recoverable—

- (a) by deducting the costs from any sum that is or becomes payable by the Minister to the owner of the eggs, or
- (b) as a simple contract debt in any court of competent jurisdiction from the owner of the eggs at the time of disposal.

Obstruction, etc.

12. A person shall not—

- (a) obstruct or impede an authorised officer in the exercise of his or her functions under these Regulations,
- (b) fail, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 6,

- (c) in purporting to give information to an authorised officer for the performance of the officer's functions under Regulation 6—
 - (i) make a statement that he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose a material particular,
- (d) tamper or otherwise interfere with a sample taken under Regulation 6, or
- (e) aid or abet a contravention of these Regulations.

Forgery

13. (1) A person shall not forge or utter knowing it to be forged an authorisation or approval issued pursuant to these Regulations, or a record purporting to be kept and maintained under these Regulations or an act of the institutions of the European Community cited in these Regulations or a document purporting to be an extract therefrom (hereafter in this Regulation referred to as a "forged document").

(2) A person shall not alter with intent to defraud or deceive, or utter knowing it to be so altered, an authorisation or approval issued pursuant to these Regulations or an extract therefrom (hereafter in this Regulation referred to as an "altered document").

(3) A person shall not have, without lawful authority, in his or her possession or under his or her control a forged document or an altered document.

Fees

14. (1) There shall be charged by the Minister in respect of an authorisation or approval under Regulation 4 such fees as the Minister may determine.

(2) Fees 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.

(3) A fee charged under this Regulation shall not exceed an amount equal to the costs, estimated by the Minister, incurred in the performance by authorised officers of functions under these Regulations in relation to the authorised packing centre or approved producer concerned.

(4) The Minister may refuse to grant, or may revoke, an authorisation or approval if the fee fixed under this Regulation is not paid.

(5) The Public Offices Fees Act 1879 does not apply in respect of a fee under this Regulation.

Offences

15. (1) Any person who contravenes or who aids or abets a contravention of—

- (a) Annex XIV.A of the Council Regulation,
- (b) Article 2, 4, 5, 6,7,8, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 or 23 of the Commission Regulation,
- (c) Regulation 3, 4(8), 8(2), (7), (8) and (9), 9(3), 12 or 13 of these Regulations, or
- (d) a condition of an authorisation or approval under Regulation 4

commits an offence and is liable on summary conviction to a fine not exceeding €5000 or to a term of imprisonment not exceeding 6 months or both.

(2) If an offence under these Regulations is committed by a body corporate and is proved to be so committed with the consent or connivance of or be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall 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.

(3) An offence under these Regulations may be prosecuted by the Minister.

Revocation and savers

16. (1) The European Communities (Marketing Standards for Eggs) Regulations 2007 are revoked.

(2) Any approval of a producer for the purpose of producing eggs described as 'free range' or 'barn' and any registration of a packing centre granted under the European Communities (Marketing Standards for Eggs) Regulations 2005 or the European Communities (Marketing Standards for Eggs) Regulations 2007 and in force immediately before the commencement of these Regulations continues in force and may be dealt with as if granted under these Regulations.



GIVEN under my Official Seal,
2 April 2009

BRENDAN SMITH.
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

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

These Regulations require compliance with European Union legislation on the marketing standards for eggs. These standards concern such matters as grading and labelling of eggs, standards for free range egg production and authorisation of egg packing centres. The Regulations also create penalties for non-compliance and provide for the authorisation of officers to conduct inspections.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased directly from the
GOVERNMENT PUBLICATIONS SALE OFFICE
SUN ALLIANCE HOUSE, MOLESWORTH STREET, DUBLIN 2,
or by mail order from
GOVERNMENT PUBLICATIONS, POSTAL TRADE SECTION,
UNIT 20 LAKESIDE RETAIL PARK, CLAREMORRIS, CO. MAYO,
(Tel: 01 - 6476834 or 1890 213434; Fax: 094 - 9378964 or 01 - 6476843)
or through any bookseller.

€3.81

