



STATUTORY INSTRUMENTS.

S.I. No. 152 of 2010



EUROPEAN COMMUNITIES (MARKETING OF FRUIT PLANT
PROPAGATING MATERIAL) REGULATIONS 2010

(Prn. A10/0519)

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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) for the purpose of giving effect to Council Directive 2008/90/EC of 29 September 2008¹, hereby make the following regulations-

Citation

1. These Regulations may be cited as the European Communities (Marketing of Fruit Plant Propagating Material) Regulations 2010.

Interpretation

2. (1) in these Regulations—

“authorised officer” means

- (a) a person appointed under the European Communities (Agriculture, Fisheries and Food) (Compliance) Regulations 2009 (S.I. No. 424 of 2009),
- (b) a member of the Garda Síochána, or
- (c) a member of Customs and Excise;

“Directive” means Council Directive 2008/90/EC of 29 September 2008;

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

(2) A word or expression that is used in the Directive and is also used in these Regulations has, in these Regulations, the same meaning as it has in the Directive.

Application

3. (1) These Regulations apply to—

- (a) the marketing of fruit plant propagating material and fruit plants intended for fruit production, within the Community, which pertain to the genera and species listed in Annex I of Council Directive 2008/90/EC of 29 September 2008 as well as their hybrids, and
- (b) rootstocks and other parts of plants of other genera or species not listed in Annex I or their hybrids, if material of genera or species so listed or their hybrids, is grafted or is to be grafted onto them.

¹O.J. L267 29.9.2008 p. 8

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 16th April, 2010.*

(2) These Regulations do not apply to propagating material and fruit plants for export where the Minister is satisfied that the propagating material and fruit plants are sufficiently isolated from propagating material and fruit plants for the European market.

(3) The European Communities (Agriculture, Fisheries and Food) (Compliance) Regulations 2009 (S.I. No. 424 of 2009) apply to these Regulations.

General Requirements

4. (1) Subject to paragraphs (2) and (3), a person shall not market—

(a) propagating material unless it is officially certified as “pre-basic material”, “basic material”, “certified material” or qualifies as “CAC material”, or

(b) a fruit plant unless it is officially certified as “certified material” or qualifies as “CAC material”.

(2) A person shall not market propagating material or a fruit plant that contains a genetically modified organism unless—

(a) the propagating material or fruit plant is subject to a consent under the Genetically Modified Organisms (Deliberate Release) Regulations 2003 (S.I. No. 500 of 2003), or

(b) the propagating material or fruit plant is authorised under Regulation (EC) No. 1829/2003 of the European Parliament and of the Council of 22 September 2003².

(3) The Minister may authorise suppliers to place on the market appropriate quantities of propagating material and fruit plants intended-

(a) for trials or scientific purposes,

(b) for selection work, or

(c) to help preserve genetic diversity.

(4) A person shall not market genus or species listed in Annex 1 to the Directive where there are specific requirements established under the Directive for such genus or species unless those specific requirements are satisfied.

Registration

5. (1) A person shall not engage in an activity under the Directive unless that person holds a valid registration or has been exempt from registration by the Minister under paragraph (4).

²O.J.L268 18.10.2003 p.1

(2) A supplier shall apply in writing to the Minister for registration providing all information that the Minister may require and such fee (if any) that the Minister may determine.

(3) The Minister may attach conditions to a registration, vary a condition, attach new conditions or refuse or revoke a registration as the Minister thinks fit.

(4) The Minister may exempt from the requirement for registration, certain suppliers whose activity is confined to the supply of small quantities of propagating material or fruit plants to non-professional final consumers.

(5) Notwithstanding the generality of paragraph (3) the Minister shall refuse an application or revoke a registration if in his or her opinion—

- (a) an act of the institutions of the European Communities or these Regulations have not, are not or will not be, complied with,
- (b) the applicant has committed an offence in relation to propagating material, fruit plants, food safety or environment in the previous 3 years, or
- (c) the applicant or holder of a registration has failed to comply with a condition of registration.

(6) If the Minister proposes to withdraw or revoke a registration or to refuse an application, he or she shall—

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

(7) The holder of a registration shall inform the Minister if significant changes are made in the operation or organisation of the activities to which the registration relates.

Conditions of Registration

6. (1) A person who holds a registration under Regulation 5 shall-

- (a) identify and monitor critical points in the production process that influence quality,
- (b) take samples for analysis as required,
- (c) ensure that lots of propagating material remain separate during production,

- (d) maintain records of the activities listed in subparagraphs (a), (b) and (c), and
 - (e) maintain records referred to in subparagraph (d), and sales and purchase records in relation to marketing of propagation material and fruit plants for at least 3 years.
- (2) If a person believes that a harmful organism—
- (a) listed in the Annexes to Directive 2000/29/EC³ is present on his or her premises, or
 - (b) is present on his or her premises at a higher level than the level allowed in Article 4 of the Directive,

the person shall immediately notify the Minister and carry out any measures required by the Minister.

(3) A person may mix propagating material or fruit plants during packaging, storage, transport or at delivery subject to maintaining records detailing the composition of the lot and the origin of the individual components.

Variety Identification

7. (1) A person shall not market propagating material and fruit plants without reference to the variety to which the propagating material or fruit plant belongs.

(2) Where a person uses rootstock and the material does not belong to a variety, the product shall be marketed by reference to species or interspecies hybrid.

- (3) For the purposes of paragraph (1), a variety means—
- (a) a legally protected plant variety,
 - (b) an officially recognised plant variety,
 - (c) a commonly known plant variety,

within the meaning of Article 7 of the Directive.

Labelling

8. (1) A person shall not market propagating material or fruit plants unless the lot is sufficiently homogeneous and—

- (a) the propagating material or fruit plants qualify as “CAC material” and is accompanied by a document completed by the supplier and detailing—
 - (i) the propagation system applied,

³OJ L169 4.7.2000 p.1

- (ii) the purity of the crop,
 - (iii) the plant health,
 - (iv) varietal aspects unless the rootstock does not belong to a variety, or
- (b) the propagating material or fruit plants are certified as “pre-basic”, “basic” or “certified material” by the Minister and is accompanied by a document completed by the supplier and detailing—
- (i) quality (including, for pre-basic and basic material, methods for the maintenance of the identity of the variety and, where applicable, of the clone, including the relevant pomological characteristics),
 - (ii) the propagation system(s) applied,
 - (iii) the purity of the crop,
 - (iv) the plant health,
 - (v) the testing methods and procedures applied, and
 - (vi) varietal aspects unless the rootstock does not belong to a variety.

(2) A person selling propagation material or fruit plants of a variety that has been genetically modified shall clearly indicate on the label or accompanying document that the variety has been genetically modified and the identity of the genetically modified organism.

(3) A person selling propagation material or fruit plants to non-professional final consumers may forego the obligations contained in paragraph (1) if the person supplies the appropriate product information on the label.

Notice

9. (1) An authorised officer may by notice in writing direct a person who markets propagating material or fruit plants to take such remedial action to comply with the Directive as he or she considers necessary.

(2) If a person fails to comply with a notice under paragraph (1) an authorised officer may destroy or cause to be destroyed any propagating material or fruit plants to which the notice applies.

(3) If an authorised officer destroys or causes to be destroyed any propagating material or fruit plants the costs (including ancillary costs) may be recovered by the Minister—

- (a) by deducting the costs from any moneys due or becoming due to the person, or
- (b) as a simple contract debt in a court of competent jurisdiction.

Service

10. (1) A notice under these Regulations shall, subject to paragraph (2), be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways—

- (a) by delivering it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or, in a case 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, in a case where an address for service has been furnished, at that address, or
- (d) where the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the notification relates to a premises, by delivering it to some person over 16 years of age resident or employed on the premises or by affixing it in a conspicuous position on or near the premises.

(2) Where a notice is to be served on or given to a person who is the owner or occupier of a premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words the owner or, as the case may require, the occupier.

(3) A person, other than the person to whom the notice refers, shall not at any time within 6 months after a notice 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 deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

Forgery

11. (1) A person shall not include on any application, database, record, a particular which he or she knows to be false or does not know to be true or recklessly include in such application, database, record, a particular which is false or which he does not know to be true.

(2) A person shall not tamper, deface or otherwise alter an application, database, or record or other such document and shall not, without lawful authority, have possession or control of, a document, database, or record that has been tampered with, defaced or otherwise altered or interfered with.

Offences

12. (1) A person who contravenes, or causes or permits a contravention of—

- (a) Article 4 of the Directive, or

(b) Regulation 4, 5, 6, 7, 8 or 11 of these Regulations,

commits an offence and is liable on summary conviction to a fine not exceeding €5,000 or to a term of imprisonment not exceeding 6 months, or to both.

(2) If an offence under these Regulations is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to wilful neglect on the part of any person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she is guilty of the offence.

(3) If the affairs of a body corporate or unincorporated body are managed by its members, paragraph (2) applies in relation to the acts and defaults of a member in connection with the functions of management as if the member were a director or manager of the body corporate.

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

Evidence

13. (1) In proceedings for an offence under these Regulations, a certificate purported to be signed by a person employed at a laboratory where a sample taken under these Regulations is analysed stating the capacity in which the person is employed and stating—

- (a) that the person received a sample,
- (b) that, for the period specified in the certificate, the person had the sample in his or her possession,
- (c) that the person gave the sample to another person named in the certificate, or
- (d) the person carried out a procedure for the purpose of detecting in the sample, a substance or contamination or that the sample contained a substance as is, or was contaminated in a manner, specified in the certificate, is, (without proof of the signature of the person or that he or she is employed at the laboratory), unless the contrary is proved, evidence of the matters stated in the certificate.

(2) A certificate purporting to be signed by an officer of the Minister and to certify that on a specific day or days or during the whole of a specified period a notice was issued in compliance with these Regulations is, without proof of the signature of the person purporting to sign the certificate that he or she is an officer of the Minister, evidence, unless the contrary is shown, of the matters stated in the certificate.

(3) In proceedings for an offence under these Regulations the court may, if matters stated in a certificate under paragraph (1) or (2) be given, and may for the purpose of receiving oral evidence adjourn the matter.

(4) In proceedings for an offence, evidence of an act of the institutions of the European Communities may be given by production of a copy of the act certified by an officer of the Minister to be a copy of the act, and it is not necessary to prove the signature of the officer or that he or she is an officer of the Minister.

(5) Paragraph (4) is in addition to and not in substitution for the European Communities (Judicial Notice and Documentary Evidence) Regulations 1972 (S.I. No. 341 of 1972).

Fixed Payment Notice

14. (1) If an officer of the Minister authorised by the Minister in that behalf has reasonable grounds for suspecting that a person is committing or has committed an offence under these Regulations, a notice in writing may be served on that person stating that—

- (a) the person is alleged to have committed the offence,
- (b) the person may during the period of 28 days from the date of the notice make to the registering authority a payment of €250 accompanied by the notice, and
- (c) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) If notice is given under paragraph (1)—

- (a) a person to whom the notice applies may, during the period specified in the notice, make to the Minister in the notice the payment specified in the notice accompanied by the notice,
- (b) the Minister may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under these Regulations, the onus of proving that a payment pursuant to a notice under this Regulation has been made lies on the defendant.

Revocations and Savers

15. (1) The following are revoked—

- (a) European Communities (Marketing of Fruit Plant Propagating Material and Fruit Plants Intended for Fruit Production) Regulations, 1994 (S.I. No. 160 of 1994),
- (b) European Communities (Marketing of Fruit Plant Propagating Material and Fruit Plants Intended for Fruit Production) (Amendment) Regulations 2004 (S.I. No. 706 of 2004), and
- (c) European Communities (Marketing of Fruit Plant Propagating Material and Fruit Plants Intended for Fruit Production) (Amendment) (No. 2) Regulations 2005 (S.I. No. 223 of 2005).

(2) An application for accreditation under a Regulation revoked in paragraph (1) shall be considered and determined as if it is an application for registration under Regulation 5.

(3) An accreditation issued under a Regulation revoked in paragraph (1) shall continue as if registered under Regulation 5.

(4) A reference in any enactment or statutory instrument to a statutory instrument revoked by paragraph (1) is construed and has effect as if the reference is a reference to these Regulations or the corresponding provision of these Regulations.



Given under my official Seal,
9 April 2010.

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)

The Regulations prescribe minimum quality standards and controls on the marketing within the European Union of fruit plant propagating material and fruit plants intended for fruit production and are repealing Directive 92/34/EEC of 28 April 1992.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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