



STATUTORY INSTRUMENTS.

S.I. No. 79 of 2020



EUROPEAN UNION (OFFICIAL CONTROLS IN RELATION TO FOOD
LEGISLATION) REGULATIONS 2020

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ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY

1. Citation
2. Interpretation and scope

PART 2

COMPETENT AUTHORITIES

3. Responsibility for functions under Official Controls Regulation
4. Fees or charges for official controls not originally planned
5. Supplemental provisions in relation to fees or charges
6. Cooperation with Commission
7. Cooperation with competent authorities of other states
8. Obligation on State authorities to transmit information
9. Delegation of tasks

PART 3

OFFICIAL CONTROLS

10. Official controls
11. Taking of samples
12. Second expert opinion
13. Division of food samples
14. Samples of relevant things
15. Obligation of official laboratories to inform Authority and official agency
16. Analysis by approved examiners
17. Official laboratories and approved examiners
18. Confidentiality
19. Transparency
20. Written record of official controls

PART 4

ENFORCEMENT, OFFENCES AND PENALTIES

21. Enforcement generally
22. Expenditure for enforcement measures
23. Appeals to District Court
24. Internal appeals
25. Powers of authorised officers
26. Seizure, removal, detention, withdrawal, recall and destruction
27. Compliance notice
28. Fixed payment notice
29. Prohibition order
30. Closure order
31. Service of notices
32. Offences
33. Bodies corporate
34. Prosecution of offences

PART 5

AMENDMENT AND REVOCATIONS

35. Amendment of Act of 1998
36. Revocations

SCHEDULE 1

Certificate of Approved Examiner

SCHEDULE 2

Fixed Payment Notice

S.I. No. 79 of 2020

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LEGISLATION) REGULATIONS 2020

I, SIMON HARRIS, 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 (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017¹ and Commission Implementing Regulation (EU) 2019/1715 of 30 September 2019², hereby make the following regulations:

PART I

PRELIMINARY

Citation

1. These Regulations may be cited as the European Union (Official Controls in relation to Food Legislation) Regulations 2020.

Interpretation and scope

2. (1) In these Regulations—

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

“approved examiner” means—

- (a) a Chief Medical Scientist located at an official laboratory,
- (b) a Consultant Microbiologist located at an official laboratory,
- (c) a Deputy Public Analyst located at a Public Analyst’s Laboratory,
- (d) an Executive Analytical Chemist located at a Public Analyst’s Laboratory,
- (e) a Public Analyst located at a Public Analyst’s Laboratory, or
- (f) a person, or member of a class of persons, designated by the Minister pursuant to Regulation 17;

“authorised officer” means an authorised officer appointed under section 49 of the Act of 1998;

¹ OJ No. L 95, 7.4.2017, p. 1, as affected by Corrigendum of 7 April 2017 (OJ No. L 137, 24.5.2017, p. 40).

² OJ No. L 261, 14.10.2019, p. 37.

“Authority” means the Food Safety Authority of Ireland;

“Board” means the Board of the Authority;

“chief executive” means the chief officer of the Authority appointed under section 37 of the Act of 1998;

“Commission” means the European Commission;

“delegated body” has the meaning assigned to it by Regulation 9(3);

“food business operator” has the meaning assigned to it by Regulation 2(1) of the European Communities (General Food Law) Regulations 2007 (S.I. No. 747 of 2007);

“food legislation” means—

- (a) the Acts (including any instruments made thereunder) specified in Part I of the First Schedule to the Act of 1998 insofar as they relate to food safety and hygiene,
- (b) the statutory instruments specified in Part II of the First Schedule to the Act of 1998 insofar as they relate to food safety and hygiene,
- (c) the Regulations of an institution of the European Communities specified in Part III of the First Schedule to the Act of 1998 insofar as they relate to food safety and hygiene,
- (d) any Act passed by the Oireachtas or any statutory instrument made thereunder or regulation made under the European Communities Act 1972 and deemed to be food legislation for the purposes of the Act of 1998;

“General Food Law Regulation” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002³, as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council of 22 July 2003⁴, Commission Regulation (EC) No. 575/2006 of 7 April 2006⁵, Commission Regulation (EC) No. 202/2008 of 4 March 2008⁶, Regulation (EU) No. 652/2014 of the European Parliament and of the Council of 15 May 2014⁷ and Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017⁸;

“IMSOC Regulation” means Commission Implementing Regulation (EU) 2019/1715 of 30 September 2019²;

“Member State” means a member state of the European Economic Area;

“Minister” means the Minister for Health;

³ OJ No. L 31, 1.2.2002, p. 1.

⁴ OJ No. L 245, 29.9.2003, p. 4.

⁵ OJ No. L 100, 8.4.2006, p. 3.

⁶ OJ No. L 60, 5.3.2008, p. 17.

⁷ OJ No. L 189, 27.6.2014, p. 1.

⁸ OJ No. L 117, 5.5.2017, p. 1.

“official agency” means the Health Service Executive, carrying out functions under food legislation, pursuant to section 48 of the Act of 1998;

“Official Controls Regulation” means Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017¹;

“official laboratory” means—

- (a) the Public Analyst’s Laboratory, Cork,
- (b) the Public Analyst’s Laboratory, Dublin,
- (c) the Public Analyst’s Laboratory, Galway,
- (d) the Public Health Laboratory, Health Service Executive, Dublin Mid-Leinster,
- (e) the Public Health Laboratory, Sligo,
- (f) the Public Health Laboratory, Waterford,
- (g) the Public Health Microbiology Laboratory, Cork,
- (h) the Public Health Microbiology Laboratory, Galway,
- (i) the Public Health Microbiology Laboratory, Limerick, or
- (j) a laboratory designated by the Minister pursuant to Regulation 17;

“operator” means any natural or legal person subject to one or more of the obligations provided for in food legislation, including a food business operator;

“record” includes, in addition to a record in writing—

- (a) a disc, tape, sound-track or other device in which information, sounds or signals are embodied so as to be capable, with or without the aid or some other instrument, of being reproduced in legible or audible form,
- (b) a film, tape or other device in which visual images are embodied so as to be capable, with or without the aid or some other instrument, of being reproduced in visual form, and
- (c) a photograph,

and any reference to a copy of a record includes—

- (i) in the case of a record to which subparagraph (a) of this definition applies, a transcript of the sounds or signals embodied therein,
- (ii) in the case of a record to which paragraph (b) of this definition applies, a still reproduction of the images embodied therein, and
- (iii) in the case of a record to which paragraphs (a) and (b) of this definition apply, such a transcript together with such a still reproduction;

“relevant thing” means—

- (a) a label, labelling, packaging or container related to food, or
- (b) materials used in the presentation or advertising of food or other accompanying material;

“service contract” means a contract entered into between the Authority and the official agency pursuant to section 48 of the Act of 1998.

(2) A word or expression which is used in these Regulations and which is also used in the Official Controls Regulation, the IMSOC Regulation or the General Food Law Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in those Regulations.

(3) These Regulations shall not apply to food businesses engaged in activities which are subject to the European Union (Food and Feed Hygiene) Regulations 2020 (S.I. No. 22 of 2020), only to the extent that the food business engages in those activities.

PART 2

COMPETENT AUTHORITIES

Responsibility for functions under Official Controls Regulation

3. (1) The competent authority, as regards compliance with food legislation, for the purposes of —

- (a) Articles 5, 6, 8, 9, 10(1), 11(1) and (2), 12, 13(1), 116(2) and 130(4), and Chapter VII of Title II, of the Official Controls Regulation, is the Authority, the official agency or the official laboratory, or a combination thereof, as appropriate,
- (b) Articles 13(2), 79, 81 to 85 and Titles IV and VII of the Official Controls Regulation, is the Authority or the official agency, or both, as appropriate,
- (c) Articles 37(3), 38(3) and (4), 39(1), 42(2)(c) and Chapter IV of Title VI, of the Official Controls Regulation and the IMSOC Regulation, insofar as they relate to iRASFF, is the Authority, and
- (d) Articles 37 (apart from paragraph (3) thereof), 39(2) and 42 (apart from paragraph (2)(c) thereof) of the Official Controls Regulation, is the Minister.

(2) The functions of the State, as regards compliance with food legislation, referred to in Articles 115, 124(1), 130(1) and 131(1) of the Official Controls Regulation and Articles 4(4), 7(3), 9(1) of the IMSOC Regulation shall be performed by the Authority.

(3) The functions of the State, as regards compliance with food legislation, referred to in Articles 79(4) and 85(1) of the Official Controls Regulation shall be performed by the Authority or the official agency, or both, as appropriate.

(4) The functions of the State, as regards compliance with food legislation, referred to in Article 130(5) of the Official Controls Regulation shall be performed by the Authority, the official agency or the official laboratory, or a combination thereof, as appropriate.

(5) For the purposes of enabling them to fulfil the obligations placed upon them by the Official Controls Regulation, the Authority, the official agency, official laboratories and the Minister may exchange among themselves, or provide to any other bodies designated in the State as competent authorities for the purposes of the Official Controls Regulation, any information received by them in the execution and enforcement of that Regulation and food legislation, including personal data within the meaning of Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016⁹ and section 69 of the Data Protection Act 2018 (No. 7 of 2018).

(6) Paragraph (5) is without prejudice to any other power of competent authorities to disclose information by or under European Union legislation.

Fees or charges for official controls not originally planned

4. (1) The Authority and the official agency shall, pursuant to Article 79(2)(c) of the Official Controls Regulation, set and collect fees or charges to recover the costs they incur in relation to official controls which were not originally planned and which—

- (a) have become necessary following detection, during an official control performed in accordance with the Official Controls Regulation, of a case of non-compliance with food legislation by the operator on whom the control is being carried out, and
- (b) are performed to assess the extent and the impact of the case of non-compliance or to verify that the non-compliance has been remedied.

(2) An operator charged pursuant to paragraph (1) shall pay the fees or charges imposed pursuant to that paragraph.

Supplemental provisions in relation to fees or charges

5. (1) When setting the level of fees or charges under Regulation 4, the Authority or the official agency, as the case may be, shall—

- (a) take account of the costs referred to in Article 81 of the Official Controls Regulation,
- (b) comply with the calculation provisions in Article 82 of the Official Controls Regulation, and
- (c) comply with Article 83(1) of the Official Controls Regulation.

⁹ OJ No. L 119, 4.5.2016, p. 1.

(2) A fee or charge payable pursuant to Regulation 4 may be recovered by the Authority or the official agency, as the case may be, from the operator by whom it is payable as a simple contract debt in a court of competent jurisdiction.

(3) Moneys received under Regulation 4 shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Public Expenditure and Reform.

(4) The Authority and the official agency may decide that fees or charges calculated in accordance with Article 82(1)(b) of the Official Controls Regulation shall not be collected below the amount at which, taking into account the cost of collection and the overall income expected from the fees or charges, the collection of that fee or charge would be uneconomical.

(5) The Authority and the official agency shall ensure a high level of transparency on the fees or charges set pursuant to Regulation 4(1), in accordance with Article 85(1) and (2) of the Official Controls Regulation.

Cooperation with Commission

6. (1) The Authority, the official agency and the official laboratories shall co-operate with the Commission experts carrying out functions under Articles 116 and 119 of the Official Controls Regulation and shall give all the necessary assistance to enable them to accomplish their tasks.

(2) The Authority or the official agency, as the case may be, shall permit the Commission experts referred to in paragraph (1), and experts from other Member States assisting the Commission Experts, to accompany authorised officers while carrying out official controls under these Regulations and the Official Controls Regulation.

(3) Commissions experts, and experts from other Member States assisting the Commission Experts, accompanying authorised officers pursuant to paragraph (2) may, for the purposes of ensuring compliance with food legislation, have access to premises or parts of premises and food, and to information, including computer systems, relevant to the execution of their duties.

(4) The Authority, the official agency and the official laboratories, shall collaborate with a Commission inspection team performing an on-the-spot official control in the State pursuant to Article 108(2) of the Official Controls Regulation.

Cooperation with competent authorities of other states

7. (1) When providing administrative assistance to the Authority or the official agency pursuant to Title IV of the Official Controls Regulation, an employee or agent of a competent authority of another Member State may participate in official controls and investigations performed by the Authority or official agency under food legislation.

(2) An employee or agent of a competent authority of another Member State who participates in official controls and investigations pursuant to paragraph (1) may, for the purposes of ensuring compliance with food legislation, have access to premises or parts of premises and food, and to information, including computer systems, relevant to the execution of their duties.

(3) Where the Authority or the official agency, as the case may be, becomes aware of non-compliance with food legislation, and if such non-compliance may have implications for another Member State, it shall, without delay, and whether or not it has been requested, pass such information to the competent authorities of that Member State.

(4) Where the Authority receives information from the competent authority of another Member State, pursuant to Article 105 or 106 of the Official Controls Regulation, the Authority or the official agency, as appropriate, shall investigate the matter, take measures and report back to the said competent authority in accordance with such Article.

(5) Where the Authority, or the official agency, as the case may be, establishes that food from another Member State does not comply with food legislation in such a way as to create a risk to human, animal or plant health, animal welfare, or, as regards GMOs and plant protection products, also to the environment, or constitutes a potentially serious infringement of food legislation, the Authority, or the official agency in consultation with the Authority, shall contact the competent authority of the Member State of dispatch and any other competent authority in a concerned Member State without delay, in accordance with Article 106(1) of the Official Controls Regulation, and shall take action under Article 106(3) and (4) of the Official Controls Regulation where appropriate.

(6) Where the Authority receives information from a state which is not a Member State indicating non-compliance with food legislation or a risk to human, animal or plant health, animal welfare, or, as regards GMOs and plant protection products, also to the environment, it shall pass that information on to competent authorities in other concerned Member States and the Commission, as required under Article 107 of the Official Controls Regulation.

(7) The Authority shall inform the Commission of third countries carrying out controls in the State pursuant to Article 124 of the Official Controls Regulation.

Obligation on State authorities to transmit information

8. Where another authority engaged in law enforcement in the State, the Office of the Director of Public Prosecution or the Courts Service obtains information on possible non-compliance with food legislation which is relevant for the application of Title IV of the Official Controls Regulation and which may constitute—

- (a) a risk to human, animal or plant health, animal welfare, or, as regards GMOs and plant protection products, also to the environment, or

- (b) a possible violation of food legislation perpetrated through fraudulent or deceptive practices,

it shall transmit such information to the Authority or the official agency, as appropriate.

Delegation of tasks

9. (1) Subject to paragraph (2), the Authority, the official agency or the official laboratory may, in accordance with Chapter III of Title II of the Official Controls Regulation, delegate to a separate legal person certain official control tasks or tasks related to other official activities.

(2) The official agency and the official laboratory must consult, and obtain the agreement of, the Authority prior to delegating tasks to a legal person under paragraph (1) for the first time.

(3) A legal person delegated tasks under paragraph (1) shall for the purposes of these Regulations and the Official Controls Regulation, constitute and be known as a “delegated body”.

(4) Where specific tasks are delegated to a delegated body under paragraph (1), the delegated body shall—

- (a) comply with the obligations of the delegating competent authority in relation to such tasks under these Regulations and the Official Controls Regulation,
- (b) communicate the outcome of the tasks performed to the delegating competent authority on a regular basis and as requested by that authority,
- (c) immediately inform the delegating competent authority whenever the outcome of the task indicates non-compliance or points to the likelihood of non-compliance, unless specific arrangements established between the competent authority and the delegated body provide otherwise, and
- (d) give the delegating competent authority access to its premises and facilities and cooperate with, and provide assistance to, such authority.

(5) A delegating competent authority under paragraph (1) may require the delegated body, in relation to the task delegated, to—

- (a) provide it with any relevant information which it has reasonable cause to believe the delegated body is able to give, and
- (b) make available to it for inspection any relevant records which it has reasonable cause to believe are held by the delegated body or are otherwise within the control of the delegated body (and, if they are kept in computerised form, to make them available in a legible form).

(6) A delegating competent authority under paragraph (1) may copy any records made available to it under paragraph (5)(b).

- (7) A person who—
- (a) fails without reasonable excuse to comply with a requirement under paragraph (4) or (5), or
 - (b) in purported compliance with such a requirement, furnishes information which he or she knows to be false or misleading in any material particular or recklessly furnishes information which is false or misleading in any material particular,

is guilty of an offence.

(8) A task delegated under paragraph (1) may be withdrawn by the delegating competent authority pursuant to Article 33(b) of the Official Controls Regulation.

(9) For the purposes of paragraph (4) or (5), the term “delegated body” includes any member, officer or employee of a delegated body.

PART 3

OFFICIAL CONTROLS

Official controls

10. (1) For the purposes of enforcing food legislation, the Authority or the official agency, as the case may be, shall carry out, or arrange to have carried out by a delegated body, official controls including the methods and techniques referred to in Article 14 of the Official Controls Regulation.

(2) Official controls carried out pursuant to paragraph (1) shall be carried out in accordance with the Official Controls Regulation and these Regulations.

Taking of samples

11. (1) An authorised officer may, for the purposes of food legislation, purchase or take without payment a sample of food or relevant thing.

(2) An authorised officer may, for the purpose of taking a sample of food open any receptacle.

(3) An authorised officer may, for the purposes of food legislation, inspect, take or make copies, whether in writing, by photography, electronically or otherwise, of a relevant thing.

(4) Subject to paragraphs (5) and (6), an authorised officer who purchases or takes without payment a sample of food or any relevant thing, with the intention of having it analysed, tested or inspected in the context of official controls, shall, at the time of such purchasing or taking, notify the operator or the person in apparent charge or control of the food or relevant thing of his or her intention of having the sample analysed, tested or inspected.

(5) In the case of food or a relevant thing offered for sale by means of distance communication, an authorised officer may order samples without identifying himself or herself.

(6) Where a sample is obtained under paragraph (5), the authorised officer shall take all reasonable steps to ensure that the person from whom the sample is ordered—

- (a) is informed that such sample has been taken in the context of an official control and, where appropriate, is analysed, tested or inspected for the purposes of such official control, and
- (b) where the sample is analysed or tested, is able to exercise his or her right to a second expert opinion under Article 35(1) of the Official Controls Regulation.

(7) An authorised officer who suspects that food or a relevant thing fails to comply with food legislation, and who purchases or takes a sample of that food or relevant thing without payment, with the intention of having it analysed, tested or inspected in the context of official controls, may, by notice in writing to the operator, or the person in apparent charge or control of such food or relevant thing, prohibit its removal except to any place which may be specified in the notice, during such period as may be specified in the notice, but not exceeding 15 working days from the date of the taking of the sample.

Second expert opinion

12. (1) Where a sample of food or any relevant thing is purchased or taken pursuant to Regulation 11, the authorised officer shall ensure that the operator whose food or relevant thing is being analysed, tested or inspected has the right to a second expert opinion, at the expense of the operator, in accordance with Article 35 of the Official Controls Regulation (“a second expert opinion”).

(2) Where a sample of food or any relevant thing is purchased or taken pursuant to Regulation 11, and where relevant, appropriate and technically feasible having regard in particular to—

- (a) the prevalence and distribution of the hazard in the food or relevant thing,
- (b) the perishability of the sample of food or relevant thing, and
- (c) the amount of available substrate,

the authorised officer shall—

- (i) when purchasing or taking the sample, and if so requested by the operator or the person in apparent charge or control of the food or relevant thing, ensure that a sufficient quantity is taken to allow for a second expert opinion and for the documentary review referred to in Article 35(1) and (3) of the Official Controls Regulation (“a documentary review”), should that prove necessary, or

- (ii) where it is not possible to take a sufficient quantity as referred to in subparagraph (i), inform the operator or person in charge or control thereof.

(3) The Authority shall publish guidelines in relation to the recognition of appropriately qualified experts for the purposes of a documentary review.

(4) Where there is a dispute between the Authority or the official agency and the operator that is based on a second expert opinion, the operator may request, pursuant to Article 35(3) of the Official Controls Regulation and at his or her own expense, a documentary review and, where appropriate, another analysis, test or inspection by another official laboratory.

(5) The official laboratory, official agency or the Authority, as the case may be, shall grant reasonable access, in such manner as it prescribes, for a recognised and appropriately qualified expert appointed by an operator to the records required for a documentary review.

Division of food samples

13. (1) An authorised officer who purchases or takes a sample of food pursuant to Regulation 11 for the purpose of proceedings for an offence under food legislation may, where the division of the sample is reasonably practicable, divide the sample into three approximately equal parts (enforcement, trade (defence) and referee), each of which he or she shall mark in such a way as to identify it as a part of the sample taken by the officer.

(2) An authorised officer who divides a sample pursuant to paragraph (1) shall—

- (a) in the presence of the operator, or the person in apparent charge or control of the food mark, seal and fasten each part in such a manner as its nature will permit, and in such a way that the integrity of the sample is not compromised,
- (b) forward one part to an approved examiner in an official laboratory for analysis, test or inspection,
- (c) give or send one part to such operator or person, or where necessary retain such part in his or her possession on behalf of the operator or person, and
- (d) retain the third part.

(3) Where an authorised officer purchases or takes a sample of food contained in unopened containers and its division into parts—

- (a) is not reasonably practicable, or
- (b) might affect the composition, integrity or impede the proper analysis of the sample,

the provisions of paragraphs (1) and (2) as regards the division of samples into parts shall be deemed to be complied with if the authorised officer divides the containers into three lots and deals with each lot as if it were a sample as specified under paragraph (1) and (2).

(4) Where a sample is obtained pursuant to Regulation 11(5), the requirement in paragraph (2) to carry out the actions referred to therein in the presence of the operator or the person in apparent charge or control of the food shall not apply.

(5) In proceedings for an offence under food legislation the result of any analysis, test or inspection of, or report on, a sample of food purchased or taken pursuant to these Regulations and the Official Controls Regulation shall not be adduced unless before the proceedings were instituted the sample was divided as specified in this Regulation.

(6) Notwithstanding paragraph (5), in proceedings for an offence under food legislation arising out of a consumer complaint in relation to a single sample of food which was not—

- (a) divided into parts in accordance with paragraph (1), or
- (b) divided into lots in accordance with paragraph (3),

the result of any analysis, test or inspection of the sample may be adduced where the sample has, before trial of the proceedings been made reasonably available to the accused person, or his or her agent, for inspection and second expert opinion and, where requested, the person who carried out the documentary review pursuant to Article 35 of the Official Controls Regulation.

(7) The Authority or the official agency, as the case may be, may, where it considers that it is necessary to eliminate or contain the risk to human health, take immediate action notwithstanding that the sampling procedures set out in this Regulation have not been carried out and notwithstanding any application by the operator for a second expert opinion under Article 35 of the Official Controls Regulation.

Samples of relevant things

14. (1) An authorised officer who purchases or takes a sample of a relevant thing pursuant to Regulation 11 shall, where possible, obtain three identical such relevant things, or take three copies or photographs thereof.

(2) An authorised officer who purchases or takes three relevant things, copies or photographs pursuant to paragraph (1) shall—

- (a) mark, seal and fasten each relevant thing, copy or photograph, in such a manner as its nature will permit, and in such a way that the integrity of the sample is not compromised,
- (b) forward one of the relevant things, copies or photographs, to an approved examiner in an official laboratory for analysis or test, or retain it for the purpose of inspection, as appropriate,
- (c) give or send one of the relevant things, copies or photographs, to the operator or the person in apparent charge or control of the relevant thing, or where necessary retain such relevant thing, copy or photograph in his or her possession on behalf of the operator or person, and

(d) retain the third relevant thing, copy or photograph.

(3) In proceedings for an offence under food legislation, where three relevant things, copies or photographs were purchased or taken pursuant to paragraph (1), the result of any analysis, test or inspection of, or report on, the relevant thing, copy or photograph shall not be adduced unless the relevant thing, copy or photograph retained by the authorised officer is produced at the hearing.

(4) Where it is not possible to purchase or take three identical relevant things, copies or photographs pursuant to paragraph (1), the result of any analysis, test or inspection of the sample of the relevant thing may be adduced where the sample has, before trial of the proceedings, been made reasonably available to the accused person, or his or her agent, for inspection and, where requested, the person who carried out the documentary review pursuant to Article 35 of the Official Controls Regulation.

(5) The Authority or the official agency, as the case may be, may, where it considers that it is necessary to eliminate or contain the risk to human health, take immediate action notwithstanding that the sampling procedures set out in this Regulation have not been carried out and notwithstanding any application by the operator for a second expert opinion under Article 35 of the Official Controls Regulation.

Obligation of official laboratories to inform Authority and official agency

15. Where the results of an analysis, test or inspection carried out on a sample of food or a relevant thing during official controls or other official activities indicate a risk to human health or point to the likelihood of non-compliance with food legislation, the official laboratory concerned shall immediately inform the Authority and the official agency.

Analysis by approved examiners

16. (1) The approved examiner or a person under his or her direction shall analyse as soon as possible any sample of food or any relevant thing, or a copy or photograph thereof, submitted to him or her in pursuance of these Regulations or food legislation and, in accordance with the criteria set out in Annex III to the Official Controls Regulation, the approved examiner shall certify to the person who submitted the sample to him or her the result of such analysis.

(2) For the purposes of paragraph (1), the form of certificate set out in Schedule 1 to these Regulations, or a certificate in like form, shall be used.

(3) An official certificate given in accordance with paragraph (1) shall be evidence of the matters contained therein until the contrary is shown.

Official laboratories and approved examiners

17. (1) For the purposes of this Regulation, an official agency means the Environmental Protection Agency, the Health Service Executive, the Marine

Institute, the Minister for Agriculture, Food and the Marine or the State Laboratory.

(2) In accordance with Article 37 of the Official Controls Regulation, the Minister may, for the purposes of food legislation, designate, by notice in writing published in *Iris Oifigiúil*—

- (a) a laboratory as a laboratory at which samples taken under food legislation may be analysed, tested or inspected and verification may be carried out (“an official laboratory”), and
- (b) a person as being a person who, or a class of persons the members of which, may, at a designated laboratory, engage in analysis, testing or inspecting and verification for the purposes of food legislation (“an approved examiner”).

(3) Notwithstanding paragraph (2), the persons and laboratories listed in the definitions of “approved examiner” and “official laboratory” in Regulation 2(1) are designated for the purposes of analysis and testing of samples taken for the purposes of official controls under food legislation.

(4) Where a laboratory in an official agency is designated pursuant to paragraph (2) or (3), the Authority shall ensure that a service contract is entered into with such official agency and that such service contract includes a detailed description of the matters referred to in Article 37(3) of the Official Controls Regulation.

(5) Notwithstanding paragraph (4), where the Environmental Protection Agency is the official agency concerned, it may enter into a memorandum of understanding with the Authority, and such memorandum of understanding shall include a detailed description of the matters referred to in Article 37(3) of the Official Controls Regulation.

(6) The Minister may use the procedure referred to in paragraph (2) to make a temporary designation in accordance with Article 42(1) of the Official Controls Regulation.

(7) The Minister may after consultation with the Authority, immediately withdraw a designation of the official laboratory under this Regulation, either completely or for certain tasks.

(8) Where—

- (a) an audit of an official laboratory under Article 39(1) of the Official Controls Regulation discloses any of the matters listed in Article 39(2) of the Official Controls Regulation, and
- (b) the official laboratory fails to take appropriate and timely remedial action

the Minister shall, after consultation with the Authority, immediately withdraw the designation of the official laboratory under this Regulation, either completely or for certain tasks.

Confidentiality

18. It is an offence for an employee or agent of the Authority, the official agency, an official laboratory or a delegated body to disclose information acquired when undertaking official controls or other official activities which by its nature is covered by professional secrecy, in contravention of Article 8 of the Official Controls Regulation.

Transparency

19. The Authority, the official agency and the official laboratory shall ensure that they carry out official controls with a high level of transparency, in accordance with Article 11(1) and (2) of the Official Controls Regulation.

Written record of official controls

20. Where an official control is carried out pursuant to the Official Controls Regulation, the Authority or the official agency, as the case may be, shall draw up a written record in accordance with Article 13 of the Official Controls Regulation and provide same to the operator concerned as required by that Article.

PART 4

ENFORCEMENT, OFFENCES AND PENALTIES

Enforcement generally

21. (1) The enforcement of food legislation shall be carried out in accordance with this Part.

(2) These Regulations and the Official Controls Regulation shall be deemed to be food legislation for the purposes of the Act of 1998.

(3) Food legislation shall be enforced by the Authority or by the official agency acting pursuant to a service contract with the Authority, or by both, and, without prejudice to paragraph (1), the enforcement provisions contained in the Act of 1998 shall apply for the purposes of ensuring compliance with the requirements of food legislation.

(4) The Authority or the official agency, as the case may be, may authorise the use of food for purposes other than those for which it was originally intended.

(5) The Authority or the official agency, as the case may be, may adopt any of the measures in this Part or any other measure it deems appropriate to deal with non-compliance with the requirements of food legislation.

(6) In deciding which measure to take under paragraph (5), the Authority or the official agency, as the case may be, shall take account of the nature of the non-compliance and the operator's past record with regard to compliance.

(7) Where the Authority or the official agency, as the case may be, decides to take measures to deal with non-compliance with the requirements of food legislation it shall provide the operator, or a representative thereof, with—

- (a) written notification of its decision, together with the reasons for the decision, and
- (b) information on the right of appeal under Regulation 23 or 24, as appropriate.

(8) Where appropriate, the Authority shall notify the competent authority of the Member State of dispatch of its decision concerning the action to be taken in accordance with paragraph (5).

Expenditure for enforcement measures

22. (1) The Authority or the official agency, as the case may be, shall, pursuant to Article 138(4) of the Official Controls Regulation, charge the responsible operator for all expenditure incurred pursuant to enforcement measures undertaken pursuant to this Part, other food legislation or the Act of 1998.

(2) An operator charged pursuant to paragraph (1) shall pay the charge imposed pursuant to that paragraph.

(3) A charge payable pursuant to this Regulation may be recovered by the Authority or the official agency from the operator by whom it is payable as a simple contract debt in a court of competent jurisdiction.

(4) 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 Public Expenditure and Reform.

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

Appeals to District Court

23. (1) A person who is aggrieved by a decision taken by an authorised officer under Regulation 21(4), 22(5) or 26(2) or (5) may appeal that decision to the District Court not later than 7 days after the decision is made by the authorised officer.

(2) The bringing of an appeal under paragraph (1) shall not have the effect of suspending the carrying out of the enforcement measures concerned, but the appellant may apply to the Court to have the carrying out of the enforcement measures suspended until the appeal is disposed of and, on such application, the Court may, if it thinks proper to do so, direct that the carrying out of the enforcement measures be suspended until the appeal is disposed of.

(3) A person who appeals against a decision under this Regulation shall at the same time notify the Authority or official agency of the appeal and the

grounds for the appeal and the Authority or official agency and the appellant shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(4) The District Court shall, upon an appeal under this Regulation, do one of the following:

- (a) affirm the decision concerned;
- (b) direct the authorised officer to withdraw the decision concerned;
or
- (c) direct the authorised officer to vary the decision concerned.

(5) An authorised officer shall comply with a direction under paragraph (4)(b) or (c).

Internal appeals

24. (1) A person who is aggrieved by a decision taken by an authorised officer under Regulations 4, 11(7), 22(1) or (2), 25(2)(b)(iii), (iv) or (v), or 26(1) may appeal that decision.

(2) The Authority and the official agency shall publish guidelines in relation to the procedure for appeals under paragraph (1) and shall inform any person who is the subject of a decision in relation to a matter referred to in paragraph (1) of his or her right to appeal and the applicable time limits.

Powers of authorised officers

25. (1) An authorised officer may, for the purposes of food legislation—

- (a) examine any procedure connected with the production, processing and placing on the market of food,
- (b) require a person to state his or her name and address and, if the authorised officer thinks it necessary, to produce corroborative evidence of same, or
- (c) carry out on-the-spot verifications when accompanied by Commission experts pursuant to Article 116(3) of the Official Controls Regulation.

(2) Where an authorised officer has reasonable grounds for believing that—

- (a) an offence is being or has been committed under food legislation, or
- (b) evidence of an offence under food legislation may be, is or has been,

on any land or premises, or in any vehicle, vessel, aircraft, railway wagon, container, equipment or machinery, the officer may, in addition to the powers exercisable by him or her under paragraph (1)—

- (i) search and inspect the land, premises, vehicle, vessel, aircraft, railway wagon, container, equipment or machinery,
- (ii) require a person in charge or control of the vehicle, vessel, aircraft, railway wagon, container, equipment or machinery to—
 - (I) refrain from moving it, or move it to a location where it may be searched, and
 - (II) give information regarding its place of departure, journey or destination,
- (iii) seize and detain any food or relevant thing from it and mark or otherwise identify it,
- (iv) detain the vehicle, vessel, aircraft, railway wagon, equipment, machinery or container for such reasonable period necessary for the purposes of permitting an inspection or a search under this Regulation either at the place where it was first detained or require it to be moved to such other location as the authorised officer requires,
- (v) seize and remove any equipment or machinery or books, documents or records and detain them for such reasonable period necessary for the purpose of his or her functions under food legislation,
- (vi) make a record, including by means of writing, sound recording, photograph or video, or other means and
- (vii) require any person at the land, premises, vehicle, vessel, aircraft, railway wagon, equipment, machinery or container, or the owner or person in charge of same, to give to him or her such assistance and information and to produce to him or her such books, records or other documents (and in the case of documents or records stored in non-legible form, produce to him or her a legible reproduction thereof) that are in that person's power or procurement, as he or she may reasonably require for the purposes of his or her functions under food legislation.

Seizure, removal, detention, withdrawal, recall and destruction

26. (1) An authorised officer may seize, remove or detain, any food or relevant thing which is suspected by him or her of failing to comply with a provision of food legislation.

(2) An authorised officer may direct the withdrawal from the market or recall of any food or relevant thing which is suspected by him or her of failing to comply with a provision of food legislation.

(3) An authorised officer may, with the consent in writing of the operator concerned, or the person in apparent charge or control of such food, or in accordance with an order of a judge of the District Court under paragraph (5), destroy or otherwise dispose of food so as to prevent it being used for human consumption.

(4) An authorised officer may, with the consent in writing of the operator concerned, or the person in apparent charge or control of such relevant thing, or in accordance with an order of a judge of the District Court under paragraph (5), destroy or otherwise dispose of a relevant thing so as to prevent consumers from being misled or a risk to human health.

(5) An authorised officer who has seized, removed or detained food or a relevant thing in pursuance of the provisions of this Regulation may, on giving notice in writing to the operator, or the person in apparent charge or control of such food or relevant thing, of his or her intention to do so, apply to a judge of the District Court for an order directing that such products be destroyed or otherwise disposed of.

(6) A judge of the District Court, to whom an application is made for an order under paragraph (3) or (4), may, if satisfied that such food or relevant thing fails to comply with food legislation, order that it be destroyed or otherwise disposed of, after such period, not exceeding 14 days, as may be specified in such order, and an authorised officer shall destroy or dispose of it accordingly.

Compliance notice

27. (1) Where an authorised officer is of the opinion that there is non-compliance with food legislation, he or she may, following consultation with the chief executive or such other officer of the Authority or the official agency designated in that behalf by the Board, serve, or arrange to have served, on the operator concerned or the person in charge a notice (“compliance notice”) in accordance with paragraph (2).

(2) A compliance notice shall—

- (a) be signed by the authorised officer issuing it, or the officer consulted in accordance with paragraph (1),
- (b) identify the requirement(s) of food legislation with which there has not been compliance,
- (c) identify the corrective actions to be taken, to remedy the non-compliance and to prevent further occurrences of such non-compliance,
- (d) where appropriate, direct the person on whom the compliance notice is served to ensure that the food is not placed or made available on the market until such time as all appropriate measures, including corrective measures, have been taken to bring the food into conformity with food legislation,
- (e) specify a date, commensurate with the nature of the non-compliance, within which the operator must take the corrective actions identified in subparagraph (c), and
- (f) contain information regarding the bringing of an appeal under paragraph (5) against the notice, including the manner in which an appeal shall be brought.

(3) A compliance notice shall not specify a date in accordance with paragraph (2)(e) that falls on or before the date by which an appeal under paragraph (6) must be brought.

(4) The chief executive of the Authority or the official agency or another officer of the Authority or the official agency designated by the Board for that purpose may, for stated reasons, revoke or vary a compliance notice issued by an authorised officer appointed by the Authority or the official agency.

(5) A person may appeal a compliance notice served on him or her to the District Court not later than 7 days after the service of the compliance notice concerned.

(6) A person who appeals against a compliance notice shall at the same time notify the Authority or official agency of the appeal and the grounds for the appeal and the Authority or official agency shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(7) In the event of non-compliance or delay by the person on whom a compliance notice has been served, an authorised officer may, with the approval of the chief executive of the Authority or official agency, or another officer thereof designated by the Board for that purpose, take whatever measures are considered necessary to ensure compliance with the compliance notice, including the seizure and destruction of the food in question or the making of any arrangements for such seizure or destruction or both.

(8) The District Court shall, upon an appeal under this Regulation, do one of the following:

- (a) affirm the compliance notice concerned;
- (b) direct the authorised officer to withdraw the compliance notice concerned; or
- (c) direct the authorised officer to modify the compliance notice concerned.

(9) An authorised officer shall comply with a direction under paragraph (8)(b) or (c).

(10) A person who fails to comply with a compliance notice by the specified date shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months, or to both.

(11) This Regulation shall not operate to prevent or restrict—

- (a) the entitlement of the Authority or the official agency to bring proceedings for the purpose of securing compliance with food legislation by a person, or
- (b) the bringing or prosecuting of any proceedings for an offence under food legislation.

(12) In this Regulation, “specified date” means, in relation to a compliance notice—

- (a) the date specified in the notice in accordance with paragraph (2)(e), where no appeal against the notice is brought under this Regulation, or
- (b) the day falling immediately after the expiration of the period of 7 days from the date on which the District Court so affirms the notice, where an appeal against the notice is brought under paragraph (5) and the District Court affirms the notice in accordance with paragraph (8)(a).

(13) Nothing in this Regulation shall prevent the Authority or official agency from serving a prohibition order or closure order at any time in respect of any business which is subject to a compliance notice if, in the opinion of an authorised officer, the circumstances require the service of such order.

Fixed payment notice

28. (1) This Regulation applies in respect of offences committed for non-compliance with the following Regulations:

- (a) Regulation 3 of the Health (Country of Origin of Beef) Regulations 2006 (S.I. No. 307 of 2006);
- (b) Regulation 6(1) and (2) of the European Communities (Hygiene of Foodstuffs) Regulations 2006 (S.I. No. 369 of 2006); and
- (c) Regulation 9(1) of the European Union (Microbiological Criteria for Foodstuffs) Regulations 2012 (S.I. No. 474 of 2012);

(in this Regulation referred to as a “relevant offence”).

(2) Where an operator fails to comply with any of the regulations in paragraph (1), an authorised officer may, following consultation with the chief executive or such other officer of the Authority or the official agency designated in that behalf by the Board, serve, or arrange to have served, on the operator a notice (“fixed payment notice”) signed by the officer or the chief executive or other officer of the Authority or official agency designated in that behalf by the Board. The form of notice set out in Schedule II or a notice in like form shall be used.

(3) A fixed payment notice served under paragraph (2), shall state—

- (a) that the person on whom it is served is alleged to have committed the relevant offence,
- (b) when and where it is alleged to have been committed,
- (c) that a prosecution for the alleged relevant offence will not be instituted if, during the period of 28 days beginning on the date of the fixed payment notice, the person pays the sum of €250 to the Authority or official agency (at the relevant mailing address, web address or bank details as stated in the notice) and submits the fixed payment notice or a copy thereof together with that payment, and

- (d) that in default of such payment, the person shall be prosecuted for the alleged relevant offence.
- (4) A payment referred to in paragraph (3) shall be accompanied by the fixed payment notice served under paragraph (2) or a copy thereof.
- (5) If a fixed payment notice is served on a person—
- (a) the person may make a payment in accordance with paragraph (3)(c),
 - (b) the Authority or official agency shall receive and retain the payment (subject to paragraph (7)) and issue a receipt for it,
 - (c) any payment received shall not be recoverable by the person who made it, and
 - (d) a prosecution in respect of the alleged relevant offence to which the notice relates shall not be instituted during the period specified in paragraph (3)(c) and, if payment is made during that period, no prosecution in respect of the alleged relevant offence will be instituted.
- (6) In a prosecution for a relevant offence, the onus of proving that a payment pursuant to a notice under this Regulation has been made lies on the defendant.
- (7) Payments received by the Authority or official agency under this Regulation shall be paid into or disposed of for the benefit of the Exchequer in such manner as the Minister for Public Expenditure and Reform directs.

Prohibition order

29. (1) Where an operator fails to comply with food legislation, an authorised officer may, following consultation with the chief executive or such other officer of the Authority or the official agency designated in that behalf by the Board, serve, or arrange to have served, on the operator or person in charge of the food in question a notice (“prohibition order”) signed by the officer or the chief executive or the other officer of the Authority or official agency designated in that behalf by the Board, and the prohibition order shall—

- (a) state that the authorised officer is of the opinion that a particular consignment, class, batch or item of food should be withdrawn from sale (whether or not the product is on the market for sale in the State or elsewhere), recalled from sale or distribution (whether or not the product is on the market for sale in the State or elsewhere), restricted or prohibited from being placed on the market for sale or imported into, or exported out of, the State,
- (b) specify the provision or provisions contravened and the matters giving rise to the said contravention,
- (c) in respect of any or all of the following, direct the person on whom the prohibition order is served to ensure that the food is—
 - (i) not used for human consumption,

- (ii) restricted or prohibited from being placed on the market,
- (iii) withdrawn from sale (whether or not the product is on the market for sale in the State or elsewhere),
- (iv) recalled from sale or distribution (whether or not the food is on sale or being or has been distributed for sale in the State or elsewhere),
- (v) as appropriate in the interests of public health, rendered safe for human consumption or detained or destroyed in a manner prescribed by the authorised officer,

and, in the event of non-compliance or delay by the person on whom the notice has been served, an authorised officer of the Authority or official agency shall, following consultation with the chief executive or other officer of the Authority or official agency designated in that behalf, take whatever steps are considered necessary to ensure compliance with the direction given under this paragraph, including the seizure and destruction of the products in question or the making of any arrangements for such seizure or destruction or both.

(2) The Board shall be notified at its next available meeting of the service of a prohibition order.

(3) The chief executive shall, in the interest of public health and consumer protection, make such arrangements as he or she considers necessary or appropriate to—

- (a) bring the matter giving rise to the prohibition notice to the attention of the public, and
- (b) notify (by means of any agreed mechanism for doing so, where such a mechanism exists) the competent regulatory authorities in other countries where the food is on sale or is or has been distributed for sale of the prohibition order.

(4) A prohibition order shall take effect—

- (a) where the order so declares, immediately the notice is received by the person on whom it is served,
- (b) in any other case—
 - (i) where no appeal is taken against the prohibition order, on the expiration of the period during which such an appeal may be taken or the day specified in the prohibition order as the day on which it is to come into effect, whichever is the later, or
 - (ii) in case such an appeal is taken, on the day next following the day on which the prohibition order is confirmed on appeal or the appeal is withdrawn or the day specified in the prohibition order as that on which it is to come into effect, whichever is the later.

(5) The bringing of an appeal against a prohibition order which is to take effect in accordance with paragraph (4)(a) shall not have the effect of suspending the operation of the prohibition order, but the appellant may apply

to the Court to have the operation of the prohibition order suspended until the appeal is disposed of and, on such application, the Court may, if it thinks proper to do so, direct that the operation of the prohibition order be suspended until the appeal is disposed of.

(6) A person who is aggrieved by a prohibition order may, within the period of 7 days beginning on the day on which the order is served on him or her, appeal against the order to a judge of the District Court in the district court district in which the prohibition order was served in the prescribed manner and in determining the appeal the judge may—

- (a) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the prohibition order, with or without modification, or
- (b) cancel the prohibition order.

(7) Where on the hearing of an appeal under paragraph (6) a prohibition order is confirmed, notwithstanding paragraph (4) the judge of the District Court by whom the appeal is heard may, on the application of the appellant, suspend the operation of the prohibition order for such period as in the circumstances of the case the district judge considers appropriate.

(8) A person who appeals against a prohibition order or who applies for a direction suspending the application of the prohibition order under paragraph (7) shall at the same time notify the Authority or official agency, as appropriate, of the appeal or the application and the grounds for the appeal or the application and the Authority or official agency shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(9) The chief executive or other person, being an employee of the Authority or a member of the Board authorised by the Board in this connection, may, for stated reasons, revoke or vary a prohibition order made in accordance with this Regulation and the Board shall be notified at its next available meeting of any such revocation or variation and the reasons therefore.

(10) Where a prohibition order has been served and activities are carried on in contravention of the prohibition order, the High Court may, on the application of an authorised officer, by order prohibit the continuance of the activities.

(11) An application to the High Court for an order under paragraph (10) shall be by motion and the Court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate and the order by which an application under this paragraph is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

Closure order

30. (1) Where an operator fails to comply with food legislation, an authorised officer may, following consultation with the chief executive or such other officer of the Authority or the official agency designated in that behalf by the Board, serve, or arrange to have served, on the operator, or the person in

charge of the business concerned, a notice (“closure order”) signed by the officer, or the chief executive or other officer of the Authority or official agency designated in that behalf by the Board, and the closure order shall, as appropriate—

- (a) state that the authorised officer is of the opinion that all or part of the business, or its establishments, holdings or other premises, to which the order relates be closed or isolated,
- (b) state that the authorised officer is of the opinion that all or part of the activities of the business concerned and, where relevant, of the internet sites or social media sites it operates or employs, be ceased for an appropriate period of time,
- (c) specify the provisions of food legislation with which the operator has failed to comply, and
- (d) direct that all or part of the business, its establishments, holdings or other premises, including internet sites or social media sites it operates or employs, cease operating or that all or part of the premises be closed or isolated unless and until the contravention of provisions so specified in pursuance of subparagraph (c) have been remedied.

(2) The Board shall be notified at its next available meeting of the service of a closure order.

(3) A closure order shall take effect—

- (a) where the order so declares, immediately the closure order is received by the person on whom it is served,
- (b) in any other case—
 - (i) where no appeal is taken against the closure order, on the expiration of the period during which such an appeal may be taken or the day specified in the closure order as the day on which it is to come into effect, whichever is the later, or
 - (ii) in case such an appeal is taken, on the day next following the day on which the closure order is confirmed on appeal or the appeal is withdrawn or the day specified in the closure order as that on which it is to come into effect, whichever is the later.

(4) The bringing of an appeal against a closure order which is to take effect in accordance with paragraph (3)(a) shall not have the effect of suspending the operation of the closure order, but the appellant may apply to the court to have the operation of the closure order suspended until the appeal is disposed of and, on such application, the court may, if it thinks proper to do so, direct that the operation of the order be suspended until the appeal is disposed of.

(5) A person who is aggrieved by a closure order may, within the period of 7 days beginning on the day on which the closure order is served on him or her, appeal against the order to a judge of the District Court in the district court

district in which the order was served in the prescribed manner and in determining the appeal the judge may—

- (a) if he or she is satisfied that in the circumstances of the case it is reasonable to do so, confirm the closure order, with or without modification, or
- (b) cancel the closure order.

(6) Where on the hearing of an appeal under paragraph (5) a closure order is confirmed, notwithstanding paragraph (4) the judge of the District Court by whom the appeal is heard may, on the application of the appellant, suspend the operation of the closure order for such period as in the circumstances of the case the district judge considers appropriate.

(7) A person who appeals against a closure order or who applies for a direction suspending the application of the closure order under paragraph (4) shall at the same time notify the Authority or official agency, as appropriate, of the appeal or the application and the grounds for the appeal or the application and the Authority or official agency shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal or the application.

(8) The chief executive or other person, being an employee of the Authority or member of the Board, authorised by the Board in this connection, may, for stated reasons, revoke or vary a closure order made in accordance with this Regulation and the Board shall be notified at its next available meeting of any such revocation or variation and the reasons therefore.

(9) Where a closure order has been served and activities are carried on in contravention of the order, the High Court may, on the application of an authorised officer, by order prohibit the continuance of the activities and order the closure of the premises.

(10) An application to the High Court for an order under paragraph (9) shall be by motion and the Court, when considering the matter, may make such interim or interlocutory order (if any) as it considers appropriate and the order by which an application under this paragraph is determined may contain such terms and conditions (if any) as to the payment of costs as the Court considers appropriate.

(11) The chief executive shall, in the interests of public health and consumer protection, make such arrangements as he or she considers appropriate or necessary to bring the contents of a closure order to the attention of the public.

Service of notices

31. (1) A notice served or given by or under this Part shall be addressed to the person concerned and served or given in one of the following:

- (a) by addressing it to the person by name and delivering it to him or her;
- (b) by leaving it at the address at which the person ordinarily resides or carries on business;

- (c) by sending it by post in a prepaid registered letter addressed to the person at the address at which he or she ordinarily resides or carries on business;
- (d) if an address for the service of notices has been furnished by the person, by leaving it at, or sending it by prepaid registered post addressed to him or her to, that address;
- (e) where the address at which the person ordinarily resides or carries on business cannot be ascertained by reasonable inquiry and notice is required to be served on, or given to, him or her in respect of any premises by delivering it to a person over the age of 16 years resident in or employed on the premises, or by affixing it in a conspicuous position on or near the premises; or
- (f) by sending it by means of electronic mail to a device or facility for the reception of electronic mail where such an electronic mail address has been furnished by the person, but only if the sender's facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail confirming successful transmission of the notice.

(2) Where the name of the person concerned cannot be ascertained by reasonable inquiry, a notice under this Act may be addressed to "the occupier", "the owner" or "the person in charge", as the case may be.

(3) For the purposes of this Regulation, a company within the meaning of the Companies Act 2014 (No. 38 of 2014) shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(4) A person shall not at any time during the period of 3 months after a notice is affixed under paragraph (1)(e) remove, damage or deface the notice without lawful authority.

Offences

32. (1) A person is guilty of an offence if he or she fails to comply with these Regulations or the Official Controls Regulation.

(2) Paragraph (1) shall not apply to an authorised officer, an approved examiner or an official laboratory or to a person acting under the express direction of such officer, examiner or laboratory, acting in the course of his or her duties pursuant to these Regulations.

- (3) A person is guilty of an offence if he or she—
 - (a) obstructs or interferes with or impedes 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 request under these Regulations,
 - (c) fails to comply with a request or notice from an authorised officer under these Regulations,

- (d) in purported compliance with a request or requirement under these Regulations, makes a statement or provides information to an authorised officer which the person knows is false or misleading in any material respect,
- (e) provides records or documents, or copies thereof, which the person knows to be false or misleading in content,
- (f) gives, in purported compliance with a request under these Regulations, a name, an address or corroborative evidence which is false or misleading,
- (g) aids or abets a contravention of these Regulations,
- (h) fails to pay a fee or charge payable pursuant to Regulation 4(2),
- (i) fails to pay a charge payable pursuant to Regulation 22(2),
- (j) fails to give access to an authorised officer, or a delegated body, in accordance with Article 15(1) of the Official Controls Regulation,
- (k) fails to assist or cooperate with an authorised officer, or delegated body, in accordance with Article 15(2) of the Official Controls Regulation, or
- (l) removes, damages or defaces a notice contrary to Regulation 31(4).

(4) In a prosecution for an offence under this Regulation the onus of proving that a fee or charge pursuant to Regulation 4(2) or a charge pursuant to Regulation 22(2) has been paid lies on the defendant.

(5) A person who forges, or utters knowing it to be forged, a certificate of analysis or other document purporting to be issued, granted or given under these Regulations, or food legislation or required for the purposes of these Regulations, or food legislation (hereafter referred to as “a forged document”), is guilty of an offence.

(6) A person who alters with intent to defraud or deceive, or utters knowing it to be so altered, a certificate of analysis or other document issued, granted or given under these Regulations or food legislation or required for the purposes of these Regulations or food legislation (hereafter referred to as “an altered document”), is guilty of an offence.

(7) A person who, without lawful authority, has in his or her possession a forged document or an altered document, knowing it to be false or altered document as the case may be, is guilty of an offence.

(8) A person who, with the intent to defraud or deceive—

- (a) tampers with any food or relevant thing with the result that a sample taken pursuant to these Regulations or food legislation does not correctly represent the food or relevant thing sampled, or
- (b) tampers or interferes with any sample taken under these Regulations or food legislation,

is guilty of an offence.

(9) A person who falsely represents himself or herself to be an authorised officer, is guilty of an offence.

(10) For the purposes of these Regulations every contravention of a Regulation shall be deemed a separate contravention and every contravention of a paragraph or a subparagraph shall also be deemed to be a separate contravention and shall carry the same penalty as for a single contravention of any Regulation.

Bodies corporate

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

Prosecution of offences

34. (1) A person who is guilty of an offence under these Regulations is liable—

- (a) on summary conviction, to a class A fine or at the discretion of the Court to imprisonment for a term not exceeding 6 months, or both, or
- (b) on conviction on indictment, to a fine not exceeding €500,000, or imprisonment for a term not exceeding 3 years, or both.

(2) Where a person is convicted of an offence under these Regulations the court shall, unless it is satisfied that there are special and substantial reasons for not so doing, order the person to pay to the Authority or the official agency, as the case may be, the costs and expenses, measured by the court, incurred by the Authority or the official agency in relation to the investigation, detection and prosecution of the offence, including costs and expenses incurred in the taking of samples, the carrying out of tests, examinations and analyses and in respect of the remuneration and other expenses of employees, consultants and advisors engaged by the Authority or the official agency.

(3) An order for costs and expenses under paragraph (2) is in addition to, and not instead of, any fine or penalty the court may impose under paragraph (1).

(4) Notwithstanding section 57 of the Act of 1998, an offence under these Regulations may be prosecuted summarily by the Authority, or the official agency.

PART 5

AMENDMENT AND REVOCATIONS

Amendment of Act of 1998

35. Section 56(1) of the Act of 1998 is amended by substituting for paragraph (f) the following:

“(f) by sending it by means of electronic mail to a device or facility for the reception of electronic mail where such an electronic mail address has been furnished by the person, but only if the sender’s facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail confirming successful transmission of the notice.”.

Revocations

36. (1) The following are revoked:

- (a) the European Communities (Official Control of Foodstuffs) Regulations 2010 (S.I. No. 117 of 2010); and
- (b) the European Communities (Official Control of Foodstuffs) (Amendment) Regulations 2011 (S.I. No. 344 of 2011).

(2) References in other enactments to the Regulations revoked under paragraph (1) shall, where the context so admits, be construed as references to these Regulations.

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

**European Union
(Official Controls in Relation to Food Legislation) Regulations 2020
Certificate of Approved Examiner**

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

was submitted to me by you and I certify that the sample was prepared and analysed/examined by me or under my direction⁽⁴⁾,

and the results are as follows⁽⁵⁾:

and as a result I am of the opinion that:

Observations:⁽⁶⁾

I further certify that the sample has undergone no change which would affect 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 of approved examiner (e.g. Executive Analytical Chemist located at a Public Analyst's Laboratory).
- (3) Insert particulars of marking (e.g. name, date etc.) and the weight or measure (this may be left unanswered if the sample cannot be conveniently weighed or measured or if the weight or measurement is not material to the result of analysis).
- (4) Indicate whether the approved examiner carried out the analysis himself or herself or whether it was carried out by another under the direction of the approved examiner.
- (5) Here the approved examiner should specify each result of the analysis having regard to the provisions of the relevant legislation, and he/she may also add, if required, a statement, or statements of conformity as per ISO/IEC 17025:2017 on the "General Requirements for the Competence of Testing and Calibration Laboratories".
- (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.

Fixed Payment Notice**Regulation 28 of the European Union (Official Controls in relation to Food Legislation) Regulations 2020**

Fixed Payment Notice Ref. No: _____

**Health Service Executive / Food Safety Authority of Ireland
(Delete as appropriate)**

1. To:

Name	
Name of Legal Entity	
Trading as	
Address Line 1	
Address Line 2	
Address Line 3	
Address Line 4	

2. It is alleged that you have committed a relevant offence as defined in Regulation 28 of the European Union (Official Controls of Food Legislation) Regulations 2020. Details of the relevant offence and associated fixed payment amount to be paid by you are set out in the table below.

Address where the offence is alleged to have been committed	
Date of offence	
Time of offence	
Provision of food legislation providing for the offence.	
Particulars of offence. [Description of factual situation constituting the contravention alleged]	
Prescribed Fixed Payment amount to be paid	€250

3. A prosecution in respect of the alleged offence will not be instituted during the period of 28 days beginning on the date of this Notice, if, during that period, you pay to the Health Service Executive or the Food Safety

Authority of Ireland the sum of €250, accompanied by the original or a copy of this Notice.

4. Payment should be made to the following [insert relevant mailing address, web address or bank details].
5. You will be prosecuted for the alleged offence if you do not make payment as mentioned above.

[Signature]

Authorised Officer

[Date]



GIVEN under my Official Seal,
13 March, 2020.

SIMON HARRIS,
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 (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017 and Commission Implementing Regulation (EU) 2019/1715 of 30 September 2019, and concern official controls and other official activities performed to ensure the application of food legislation.

These Regulations revoke the European Communities (Official Control of Foodstuffs) Regulations 2010 and the European Communities (Official Control of Foodstuffs) (Amendment) Regulations 2011.

These Regulations may be cited as the European Union (Official Controls in relation to Food Legislation) Regulations 2020 and they come into effect on the date they were signed.

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ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
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