



STATUTORY INSTRUMENTS.

S.I. No. 250 of 2015

EUROPEAN UNION (SPECIAL CONDITIONS GOVERNING THE
IMPORT OF CERTAIN FOOD FROM CERTAIN THIRD COUNTRIES
DUE TO CONTAMINATION RISK BY AFLATOXINS) REGULATIONS
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I, LEO VARADKAR, 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 effect to Commission Implementing Regulation (EU) No. 884/2014 of 13 August 2014¹, insofar as it relates to food, hereby make the following regulations:

Part I

PRELIMINARY

Citation

1. These Regulations may be cited as the European Union (Special Conditions Governing the Import of Certain Food from Certain Third Countries Due to Contamination Risk by Aflatoxins) Regulations 2015.

Interpretation

2. (1) In these Regulations—

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

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

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

“common entry document” means the document to be completed by the food business operator or its representative as provided for in Article 6 of EC Regulation 669/2009, a model of which is set out in Annex II to EC Regulation 669/2009, and by the competent authority confirming completion of official controls, completed in the official language, or in one of the official languages, of the Member State where the designated point of entry is located and in English;

“consignment” means an identifiable quantity of—

(a) food referred to in Article 1(1) of, and Annex I to, EU Regulation 884/2014,

¹OJ No. L 242, 14.8.2014, p. 4.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 19th June, 2015.*

- (b) food processed from food referred to in Article 1(1) of, and Annex I to, EU Regulation 884/2014, or
- (c) compound food containing food referred to in Article 1(1) of, and Annex I to, EU Regulation 884/2014 in a quantity above 20 per cent,

delivered at one time and determined by an authorised officer to be of the same class or description, covered by the same document(s), conveyed by the same means of transport and coming from the same third country or part of such country;

“designated point of entry” means a particular point of entry designated by a competent authority of a Member State pursuant to Article 17 of EC Regulation 882/2004 for the purposes of importation of consignments, and in the case of the State, means such point designated by the State and listed on the website www.fsai.ie; in cases of consignments arriving by sea, which are unloaded at a port in the State for the purposes of being loaded on another vessel for onwards transportation to a port in another Member State, the designated point of entry shall be the latter port;

“designated point of import” means any point designated by the State, and listed on the website www.fsai.ie, through which a food, processed food or compound food referred to in Article 1 of, and Annex I to, EU Regulation 884/2014 may be imported into the European Economic Area;

“EC Regulation 669/2009” has the meaning assigned to it by Regulation 2(1) of the European Communities (Official Controls on the Import of Food of Non-Animal Origin) Regulations 2010 (S.I. No. 391 of 2010);

“EU Regulation 884/2014” means Commission Implementing Regulation (EU) No. 884/2014 of 13 August 2014¹;

“food business operator” means a food business operator engaged in the import of food, processed food or compound food, covered by Article 1 of, and Annex I to, EU Regulation 884/2014;

“General Food Law Regulation” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002²;

“health certificate” means the health certificate required by Article 5 of EU Regulation 884/2014, a model for which is set out in Annex II to that Regulation, completed in an official language of the exporting country and in English;

“Health Service Executive” (HSE) means the Health Service Executive, established under section 6 of the Health Act 2004 (No. 42 of 2004);

“Member State” means a State which is a contracting party to the Agreement on the European Economic Area signed in Oporto on 2 May 1992;

²OJ No. L 31, 1.2.2002, p. 1.

“official agency” means the Health Service Executive, carrying out functions under these Regulations and EU Regulation 884/2014, pursuant to section 48 of the Act of 1998;

“Official Controls Regulation” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004³, as affected by the Corrigendum to Regulation (EC) No. 882/2004 of 28 May 2004⁴, as amended by Commission Regulation (EC) No. 1029/2008 of 20 October 2008⁵, Regulation (EC) No. 596/2009 of the European Parliament and of the Council of 18 June 2009⁶, Commission Regulation (EU) No. 208/2011 of 2 March 2011⁷ (as corrected by Commission Regulation (EU) No. 880/2011 of 2 September 2011⁸), Commission Regulation (EU) No. 563/2012 of 27 June 2012⁹, Council Regulation (EU) No. 517/2013 of 13 May 2013¹⁰ and Regulation (EU) No. 652/2014 of the European Parliament and of the Council of 15 May 2014¹¹;

“official detention” has the meaning assigned to it by Article 2 of the Official Controls Regulation.

(2) A word or expression which is used in these Regulations and which is also used in EU Regulation 884/2014, the General Food Law Regulation, the Official Controls Regulation or EC Regulation 669/2009 has, unless the context otherwise requires, the same meaning in these Regulations as it has in EU Regulation 884/2014, the General Food Law Regulation, the Official Controls Regulation or EC Regulation 669/2009.

Food legislation

3. These Regulations shall be deemed to be food legislation for the purposes of the Act of 1998.

Part 2

GENERAL PROVISIONS

Competent authority

4. The competent authority for the purposes of EU Regulation 884/2014 and of these Regulations shall be the Authority, or the official agency, as appropriate.

Carrying out of official controls

5. The Authority or the official agency, as the case may be, shall carry out official controls on consignments of food covered by EU Regulation 884/2014 in accordance with that Regulation and these Regulations.

³OJ No. L 165, 30.4.2004, p. 1.

⁴OJ No. L 191, 28.5.2004, p. 1.

⁵OJ No. L 278, 21.10.2008, p. 6.

⁶OJ No. L 188, 18.7.2009, p. 14.

⁷OJ No. L 58, 3.3.2011, p. 29.

⁸OJ No. L 228, 3.9.2011, p. 8.

⁹OJ No. L 168, 28.6.2012, p. 24.

¹⁰OJ No. L 158, 10.6.2013, p. 1.

¹¹OJ No. L 189, 27.6.2014, p. 1.

Detention of consignments

6. The Authority or the official agency, as the case may be, may order the official detention of consignments of food where that is required to fulfil its obligations under EU Regulation 884/2014 and the place and duration of such detention shall be determined by the Authority or the official agency, as appropriate, subject to the time limit of 15 working days under Article 9(1) of EU Regulation 884/2014.

Import conditions

7. (1) Subject to paragraph (2), in the case of consignments of food, processed food or compound food imported from third countries and covered by Article 1 of, and Annex I to, EU Regulation 884/2014—

- (a) food business operators may only import the consignment through the designated point of entry in the State for the particular food, or a designated point of entry in another Member State for the particular food;
- (b) where the designated point of entry is in the State, food business operators or their representatives shall, at least one working day prior to the physical arrival of the consignment, notify the official agency at the designated point of entry of—
 - (i) the estimated date and time of the arrival, and
 - (ii) the nature of the consignment

by completing and transmitting Part I of the common entry document, taking into account the notes for guidance laid down in Annex III to EU Regulation 884/2014;

- (c) where the designated point of entry is in another Member State, food business operators shall, at least one working day prior to the physical arrival of the consignment in the State, notify the official agency at the designated point of import by sending a copy of the common entry document completed as regards the documentary control by the competent authority at the designated point of entry;
- (d) food business operators shall, at the time of presentation for import into the State, present the results of sampling and analysis in accordance with Article 4(1) of EU Regulation 884/2014;
- (e) food business operators shall ensure that the sampling and analysis referred to in subparagraph (d) is performed in accordance with Commission Regulation (EC) No. 401/2006 of 23 February 2006¹²;
- (f) sampling and analysis for the official controls shall be carried out in accordance with Commission Regulation (EC) No. 401/2006 of 23 February 2006¹²;

¹²OJ. No. L 70, 9.3.2006, p. 12.

- (g) in addition to the requirements of subparagraph (f), the sampling and analysis for the official control of aflatoxins shall be carried out in accordance with Part 4 of the European Communities (Certain Contaminants in Food) Regulations 2010 (S.I. No. 218 of 2010);
- (h) food business operators shall, at the time of presentation for import into the State, present a health certificate completed, signed and verified in accordance with Article 5 of EU Regulation 884/2014 and issued not more than four months prior to the date of presentation of the food for import;
- (i) food business operators shall ensure that each consignment is identified with a code which corresponds to the identification code on the sampling and analysis results and the health certificate and each individual bag or other form of packaging of the consignment must be identified with that identification code;
- (j) food business operators shall ensure the unloading of the consignment necessary for representative sampling to take place and, in the case of special transport or specific packaging forms, make available to the official agency the appropriate sampling equipment insofar as the sampling cannot be representatively performed with the usual sampling equipment in accordance with Article 8 of EU Regulation 884/2014;
- (k) food business operators shall ensure that the original of the health certificate, the results of sampling and analysis and the common entry document shall accompany a consignment during its transfer until it is released for free circulation in accordance with Article 9(7) of EU Regulation 884/2014;
- (l) food business operators shall not split consignments until all official controls have been completed and the common entry document has been completed by the official agency in accordance with Article 9 of EU Regulation 884/2014;
- (m) food business operators shall ensure that, where a consignment is subsequently split, an authenticated copy of the common entry document shall accompany each part of the consignment until it is released for free circulation;
- (n) the release for free circulation of consignments shall be subject to the presentation by the food business operator or their representative to the custom authorities of a common entry document, or its electronic equivalent, duly completed by the official agency once all official controls required by EU Regulation 884/2014 have been carried out and a favourable decision by the official agency is indicated in accordance with Article 11 of EU Regulation 884/2014;
- (o) where the consignment is not presented for official controls, or is not presented in accordance with any specific requirements established in

accordance with EU Regulation 884/2014, the official agency shall order that the consignment be recalled and placed under official detention without delay and that it then be either destroyed or re-dispatched in accordance with Article 21 of the Official Controls Regulation; and

- (p) the consignment shall be subject to official controls at designated points of import, in accordance with Article 9 of EU Regulation 884/2014.

(2) Paragraph (1) shall not apply to consignments of food which are destined to a private person for personal consumption and use only.

(3) It is the responsibility of the recipient of the consignment to prove that paragraph (2) applies.

Designated points of import

8. The official agency shall ensure that the designated points of import comply with the requirements set down in Article 8 of EU Regulation 884/2014.

Part 3

FEES, ENFORCEMENT AND SANCTIONS

Fees

9. (1) The Authority and the official agency shall, pursuant to Article 14 of EU Regulation 884/2014, set and charge fees to cover the costs occasioned by the official controls carried out pursuant to that Regulation and these Regulations, including sampling, analysis, storage and any measures taken following non-compliance.

(2) The food business operator responsible for the particular consignment, or representatives thereof, shall pay the fees set pursuant to paragraph (1).

(3) A fee payable pursuant to this Regulation may be recovered by the Authority or the official agency from the person 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 Finance.

(5) The Public Offices Fees Act 1879 (42 & 43 Vict. Cap 58) does not apply to a fee charged pursuant to this Regulation.

(6) The Authority or the official agency, as the case may be, may order that a consignment be destroyed, or otherwise disposed of, where a food business operator has failed to pay a fee charged pursuant to this Regulation in relation to said consignment and the Authority or official agency forms the view that the consignment has been abandoned.

Additional powers of authorised officers

10. In the course of his or her duties, an authorised officer may 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.

Offences

11. (1) The offences provided for in these Regulations shall not apply to an authorised officer or to a person acting under such an officer's express direction, acting in the course of his or her duties pursuant to these Regulations.

- (2) A person is guilty of an offence if he or she, by act or omission—
- (a) obstructs or interferes with an authorised officer in the exercise of the officer's powers under these Regulations;
 - (b) fails or refuses to state his or her name or address in compliance with a request under these Regulations;
 - (c) fails to comply with a request or notice from an authorised officer under these Regulations;
 - (d) makes a statement to an authorised officer which the person knows is false or misleading;
 - (e) gives, in purported compliance with a request under these Regulations, a name, an address or corroborative evidence which is false or misleading;
 - (f) falsely represents himself or herself to be an authorised officer;
 - (g) imports a consignment of food other than through the designated point of entry in the State for the particular food, or a designated point of entry in another Member State for the particular food, contrary to Regulation 7(1)(a) and Article 9(2) of EU Regulation 884/2014;
 - (h) imports a consignment of food into the State through the designated point of entry in the State but fails to notify the official agency at the designated point of entry in accordance with Regulation 7(1)(b) and Article 7(1), (2) and (3) of EU Regulation 884/2014;
 - (i) imports a consignment of food through a designated point of entry in another Member State but fails to notify the official agency at the designated point of import prior to the physical arrival of the consignment in the State in accordance with Regulation 7(1)(c) and Article 7(4) of EU Regulation 884/2014;
 - (j) imports a consignment of food but fails to submit the results of sampling and analysis in accordance with Regulation 7(1)(d) and Article 4(1) of EU Regulation 884/2014;

- (k) fails to ensure that the sampling and analysis on a consignment is performed in accordance with Regulation 7(1)(e) and Article 9(5) of EU Regulation 884/2014;
- (l) imports a consignment of food but fails to submit a health certificate in accordance with Regulation 7(1)(h) and Article 5 of EU Regulation 884/2014;
- (m) fails to fully and properly identify a consignment of food with a code, in accordance with Regulation 7(1)(i) and Article 6 of EU Regulation 884/2014;
- (n) fails to ensure the unloading of the consignment of food necessary for representative sampling to take place in accordance with Regulation 7(1)(j) and Article 8 of EU Regulation 884/2014;
- (o) in the case of a consignment requiring special transport or specific packaging forms, fails to make available to the official agency the appropriate sampling equipment insofar as the sampling cannot be representatively performed with the usual sampling equipment in accordance with Regulation 7(1)(j) and Article 8 of EU Regulation 884/2014;
- (p) transfers a consignment into the State, prior to it being released for free circulation, without an accompanying health certificate, results of sampling and analysis and common entry document, contrary to Regulation 7(1)(k) and Article 9(7) of EU Regulation 884/2014;
- (q) splits a consignment of food, contrary to Regulation 7(1)(l) and Article 10(1) of EU Regulation 884/2014;
- (r) in the case of a consignment which has been split, fails to ensure that an authenticated copy of the relevant common entry document accompanies each part of a consignment in accordance with Regulation 7(1)(m) and Article 10(2) of EU Regulation 884/2014;
- (s) releases for free circulation in the State, a consignment of food not having presented to the custom authorities a common entry document, or its electronic equivalent, duly completed by the official agency in accordance with Regulation 7(1)(n) and Article 11 of EU Regulation 884/2014;
- (t) provides misleading information in relation to a proposed re-dispatch of a consignment in accordance with Regulation 7(1)(o) and Article 9(3) of EU Regulation 884/2014;
- (u) fails to pay a fee payable pursuant to Regulation 9;
- (v) forges, or utters knowing it to be forged, a common entry document or other document purporting to be issued, granted or given under

these Regulations, or required for the purposes of these Regulations (“a forged document”);

- (w) alters with intent to defraud or deceive, or utters knowing it to be so altered, a common entry document or other document issued, granted or given under these Regulations, or required for the purposes of these Regulations (“an altered document”);
- (x) has in his or her possession, without lawful authority, a forged document or an altered document, knowing it to be a forged or altered document as the case may be;
- (y) tampers with any substance or thing with intent to defraud or deceive and with the result that a sample taken pursuant to these Regulations does not correctly represent the substance sampled; or
- (z) tampers or interferes with any sample taken under these Regulations, with intent to defraud or deceive.

(3) 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.

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

(5) 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.

(6) 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 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 official agency.

(7) An order for costs and expenses under paragraph (6) is in addition to, and not instead of, any fine or penalty the court may impose under paragraph (5).

Prosecution of offences

12. Notwithstanding section 57 of the Act of 1998, a summary offence under these Regulations may be prosecuted by:

- (a) the Authority, or
- (b) the official agency.

Part 4

REVOCATIONS

13. (1) The following are revoked:

- (a) the European Union (Special Conditions Governing the Import of Certain Foods from Certain Third Countries Due to Contamination Risk by Aflatoxins) Regulations 2011 (S.I. No. 650 of 2011);
- (b) the European Union (Special Conditions Governing the Import of Certain Foods from Certain Third Countries Due to Contamination Risk by Aflatoxins) (Amendment) Regulations 2012 (S.I. No. 472 of 2012);
- (c) the European Union (Special Conditions Governing the Import of Certain Food from Certain Third Countries Due to Contamination Risk) Regulations 2013 (S.I. No. 176 of 2013); and
- (d) the European Union (Special Conditions Governing the Import of Certain Foods from Certain Third Countries Due to Contamination Risk by Aflatoxins) (Amendment) Regulations 2013 (S.I. No. 177 of 2013).

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



GIVEN under my Official Seal,
12 June 2015.

LEO VARADKAR,
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 effect to Commission Implementing Regulation (EU) No. 884/2014 of 13 August 2014 imposing special conditions governing the import of certain feed and food from certain third countries due to contamination risk by aflatoxins and repealing Regulation (EC) No. 1152/2009, in so far as it relates to food.

These Regulations revoke the European Union (Special Conditions Governing the Import of Certain Foods from Certain Third Countries Due to Contamination Risk by Aflatoxins) Regulations 2011 (S.I. No. 650 of 2011), the European Union (Special Conditions Governing the Import of Certain Foods from Certain Third Countries Due to Contamination Risk by Aflatoxins) (Amendment) Regulations 2012 (S.I. No. 472 of 2012), the European Union (Special Conditions Governing the Import of Certain Food from Certain Third Countries Due to Contamination Risk) Regulations 2013 (S.I. No. 176 of 2013) and the European Union (Special Conditions Governing the Import of Certain Foods from Certain Third Countries Due to Contamination Risk by Aflatoxins) (Amendment) Regulations 2013 (S.I. No. 177 of 2013).

These Regulations may be cited as the European Union (Special Conditions Governing the Import of Certain Food from Certain Third Countries Due to Contamination Risk by Aflatoxins) Regulations 2015.

These Regulations should be read in conjunction with the European Communities (Official Controls on the Import of Food of Non-Animal Origin) Regulations 2010 (S.I. No. 391 of 2010) as some of the general conditions relating to the import of foods of non-animal origin are derived from those Regulations.

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