



STATUTORY INSTRUMENTS.

S.I. No. 9 of 2020

EUROPEAN UNION (TEMPORARY INCREASE OF OFFICIAL
CONTROLS AND EMERGENCY MEASURES ON IMPORTS OF FOOD
AND FEED OF NON-ANIMAL ORIGIN) REGULATIONS 2020.

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I, Michael Creed, Minister for Agriculture, Food and the Marine, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving further effect to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017¹, Article 53 of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002² and partial effect to Commission Implementing Regulation (EU) 2019/1793 of 22 October 2019³, hereby make the following regulations:

PART 1*Citation*

1. These Regulations may be cited as the European Union (Temporary Increase of Official Controls and Emergency Measures on Imports of Food and Feed of Non-animal Origin) Regulations 2020.

Application

2. (1) Subject to paragraph (2), these Regulations apply to-

(a) food of non-animal origin listed in Annexes (I) or (II) to Regulation 2019/1793 that has, in or on such food, possible non-compliance with the maximum allowed levels of pesticide residues, or

(b) feed listed in Annexes (I) or (II) to Regulation 2019/1793

that is imported into the State from a country other than a Member State.

(2) These Regulations do not apply to consignments of food or feed of a gross weight not exceeding 30 kg—

(a) which are destined to a private person for personal consumption or use only, or

(b) sent as trade samples, laboratory samples or as display items for exhibitions, that are not intended to be placed on the market or are sent to be used for scientific purposes.

¹ OJ L 95, 7.4.2017, p. 1

² OJ L 31, 1.2.2002, p. 1

³ OJ L 277, 29.10.2019, p. 89

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

Interpretation

3. (1) In these Regulations-

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

“authorised officer” means-

- (a) an authorised officer appointed under section 49 of the Act of 1998,
- (b) a person appointed under Regulation 11,
- (c) an officer of the Revenue Commissioners, or
- (d) a member of the Garda Síochána;

“consignment” has the meaning assigned to it by Article 3(37) of Regulation 2017/625;

“EU Regulations” means Regulation 2017/625 and Regulation 2019/1793;

“General Food Law Regulation” means Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 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, Commission Regulation (EU) 2017/228 of 9 February 2017⁸, Regulation (EU) 2019/1243 of the European Parliament and of the Council of 20 June 2019⁹ and Regulation (EU) 2019/1381 of the European Parliament and of the Council of 20 June 2019¹⁰;

“Minister” means Minister for Agriculture, Food and the Marine;

“official detention” has the meaning assigned to it by Article 3(47) of Regulation 2017/625;

⁴ OJ L 245, 29.9.2003, p. 4

⁵ OJ L 100, 8.4.2006, p. 3

⁶ OJ L 60, 5.3.2008, p. 17

⁷ OJ L 189, 27.6.2014, p. 1

⁸ OJ L 35, 10.2.2017, p. 10

⁹ OJ L 198, 25.7.2019, p. 241

¹⁰ OJ L 231, 6.9.2019, p. 1

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

“Regulation 2019/1793” means Commission Implementing Regulation (EU) 2019/1793 of 22 October 2019.

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

PART 2

GENERAL PROVISIONS

Official Controls

4. The Minister may carry out official controls on food or feed of non-animal origin imported into the State from a country other than a Member State, in accordance with Chapter V of Title II of EC Regulation 2017/625 and Regulation 2019/1793.

Official Detention

5. The Minister may order, for as long as is necessary, the official detention of consignments of food or feed of non-animal origin imported into the State from countries other than Member States where that is required to fulfil the Minister’s obligations under Chapter V of Title II of EC Regulation 2017/625.

Non-Compliance

6. Where official controls carried out under Chapter V of Title II of EC Regulation 2017/625 establish non-compliance with the EU Regulations, the General Food Law Regulations or these Regulations, the Minister may detain and take further measures to deal with the non-compliant consignment in accordance with Article 66 or 138(2) of Regulation 2017/625.

Consignment Is Injurious To Health

7. Where the official controls carried out under Chapter V of Title II of EC Regulation 2017/625 indicate that a consignment is injurious to human or animal health, or unsafe, the Minister may deal with the consignment in accordance with Article 67 or 138(2) of that Regulation.

Action of Minister

8. (1) The Minister may allow the re-dispatch of consignments only where the conditions laid down in Article 72 of EC Regulation 2017/625 are satisfied.

(2) The Minister may destroy a consignment referred to in paragraph (1) after the expiry of 60 days following the day on which the Minister decided on the destination of the consignment, unless a delay in re-dispatch is justified to the Minister.

Additional Measures

9. The Minister shall apply additional measures to certain food and feed of non-animal origin to which these Regulations relate, including—

- (a) food business operators or feed business operators may only import consignments of such food and feed into the State through a designated border control post for the particular product (a list of such border control posts shall be published on an internet website maintained by the Minister);
- (b) food business operators, feed business operators or their representatives shall, in accordance with Article 56(4) of EC Regulation 2017/625, at least 1 working day prior to the arrival of a consignment of such food or feed, notify the Minister at the particular designated border control post of the pending arrival, by means of the common health entry document;
- (c) where a consignment of such food or feed is not presented for official controls, or is not presented in accordance with any specific requirements established in accordance with Article 56, 58 or 59 of EC Regulation 2017/625, the Minister may 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 66(6) of Regulation 2017/625;
- (d) consignments of such food or feed shall be subject to an increased level of official controls at designated border control posts, in accordance with Article 65(4) of Regulation 2017/625;
- (e) the release for free circulation of consignments of such food or feed shall be in accordance with Article 4 of Regulation 2019/1793;
- (f) a food business operator or feed business operator shall make available to the Minister any resources, logistics or equipment required in accordance with Article 15 of Regulation 2017/625;
- (g) where official controls establish non-compliance, an authorised officer may complete the relevant Part of the common health entry document and apply Section III of Chapter V of Title II as appropriate.

Reasoning

10. The Minister shall provide the food business operator or the feed business operator concerned, or their representative with—

- (a) written notification of its decision concerning action to be taken together with the reasons for its decision, and
- (b) information on the right of appeal against such decision.

PART 3

Appointment of authorised officer

11. (1) The Minister may appoint in writing such persons or classes of persons as he or she considers appropriate to be authorised officers for the exercise of all or any of the functions conferred on an authorised officer under these Regulations, as specified in the appointment.

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

(3) An appointment as an authorised officer ceases—

- (a) if it is terminated pursuant to paragraph (2),
- (b) if it is for a fixed period, on the expiry of that period,
- (c) if it is for a specified purpose, on the completion of that purpose, or
- (d) if the person appointed is an officer of the Minister, upon the person ceasing to be such an officer.

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

(5) An authorised officer appointed under this Regulation shall be furnished with a warrant of his or her appointment and, when exercising a power conferred on him or her, the officer, an officer of the Revenue Commissioners or a member of the Garda Síochána shall, if requested by a person affected, produce the warrant or evidence that he or she is such an officer or member to the person.

Functions of authorised officer

12. (1) For the purposes of the EU Regulations, the General Food Law Regulations or these Regulations an authorised officer may—

- (a) enter and inspect, at all reasonable times, any premises if he or she is carrying out an official control or other official activity for the purposes of the EU Regulations, the General Food Law

Regulations or these Regulations or where he or she has reasonable grounds for believing that—

- (i) food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates is, may be or has been present,
 - (ii) a record relating to food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates is, may be or has been present,
 - (iii) equipment, machinery, a vehicle, a vessel or other thing used in connection with food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates is, may be or has been present,
- (b) examine food or feed of non-animal origin, equipment, machinery or other thing used in connection with food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates,
- (c) require the name and address of the owner, or person in possession or control of food or feed of non-animal origin, equipment, machinery, a document, a vehicle or a vessel used in connection with food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates, or require details of place of departure, journey or destination,
- (d) inspect a vehicle, a vessel, an aircraft, a railway wagon, a container, equipment, machinery, a computerised information management system or other thing used in connection with food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates and require the person in charge or control of such to refrain from moving it,
- (e) require the owner, person in possession or control of any premises, equipment, machinery, a computerised information management system, a vehicle, a vessel or other thing used in connection with food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates, to produce to the officer such records (and in the case of a record stored in non-legible form, produce to him or her a copy in a legible form) that are in the person's possession or procurement, or under the person's control, as the officer may reasonably require,
- (f) inspect and take copies of any record (including a legible reproduction of one stored in non-legible form) or extracts from the record that the officer finds or is produced to him or her during an inspection,

- (g) make a record, including by means of writing, sound recording, photograph, video or other means,
- (h) take, without making a payment, samples from food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates, or any article, substance or liquid as he or she may reasonably require and carry out or cause to be carried out on the samples such tests, analyses, examinations or inspections as he or she considers necessary or expedient and mark or otherwise identify it,
- (i) obtain samples of food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates by way of anonymously placed orders or mystery shopping, whether in person, remotely or over the internet, and carry out or cause to be carried out on the samples such tests, analyses, examinations or inspections as he or she considers necessary or expedient and mark or otherwise identify it.

(2) An authorised officer may require a person to give information regarding the ownership and identity of food, feed, equipment, machinery, a vehicle, a vessel or other thing used in connection with food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates as is in the person's knowledge or procurement.

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

- (a) an offence is being or has been committed under these Regulations,
- (b) a contravention of the EU Regulations is, or has been taken place, or
- (c) evidence of an offence or contravention to which subparagraphs (a) or (b) relates may be, is or has been on any land or premises, or in a vehicle, a vessel, an aircraft, a railway wagon, a container, equipment or machinery,

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

- (i) search the land or premises;
- (ii) search the vehicle, vessel, aircraft, railway wagon, container, equipment or machinery (including any computerised information management system);
- (iii) 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,

- (II) give information regarding its place of departure, journey or destination, and
- (III) where the equipment or machinery is part of a computerised information management system, provide assistance (including passwords) to enable access to such devices or systems;
- (iv) seize and detain food or feed of non-animal origin, food or feed and mark or otherwise identify it;
- (v) 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;
- (vi) 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 these Regulations;
- (vii) give such direction to a person who has food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates, or who has equipment, machinery, vehicle or vessel or other thing used in connection with food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates in his or her possession or under his or her control or who has information relating to such, as the authorised officer may reasonably consider necessary for the purposes of these Regulations.

(4) An authorised officer shall not enter, except with the consent of the occupier, a private dwelling unless he or she has obtained a search warrant under Regulation 13 other than where he or she has reasonable grounds for believing that before a search warrant could be sought in relation to the dwelling under Regulation 13, any evidence of an offence referred to in paragraph (3)(b) is being or is likely to be disposed of or destroyed.

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

(6) An authorised officer may use reasonable force, if necessary, to exercise his or her functions under these Regulations.

(7) Where, in the course of exercising a function under these Regulations, an authorised officer finds or comes into possession of anything that the officer has reasonable grounds for believing to be evidence of an offence or suspected offence under these Regulations, the officer may seize and retain it for use in evidence in proceedings for an offence under these Regulations.

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

(9) A member of the Garda Síochána may stop a vehicle or vessel, for the purposes of these Regulations and may require it to be moved for inspection to such place as he or she directs.

(10) A person who has—

- (a) food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates, or
- (b) equipment, machinery, a vehicle, a vessel or other thing used in connection with food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates in his or her possession or under his or her control, or information or a record relating to any of them, shall give such—
 - (i) assistance to an authorised officer, or person who accompanies the officer, and
 - (ii) information to an authorised officer on request being made, in that behalf by the officer, as the officer may reasonably require for the exercise of his or her functions under these Regulations.

(11) The owner or person in charge of any premises used in connection with food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates shall, if required by an authorised officer, where it is practicable and possible, provide suitable equipment or facilities or a suitable part of the plant or establishment for the officer to carry out his or her functions under these Regulations.

(12) An authorised officer may require a person to give to the officer such information as is in the person's power or procurement as regards any premises specified by the officer including—

- (a) whether or not the premises is used, either partly or wholly, for or in connection with food or feed of non-animal origin or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates,
- (b) the name of the owner, occupier or person who is in charge of the premises, and
- (c) whether or not the premises is let and, if let, the name and address of the person to whom, and the period of time for which, it is let.

(13) Nothing in section 17 of the Industrial and Provident Societies Act 1893 prevents an authorised officer from exercising a function conferred on him or her by these Regulations.

Search warrant

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

- (a) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found on a premises,
- (b) there is or was feed, food or equipment or other thing made, used or adapted for use (including manufacture and transport) in connection with feed or food, or
- (c) a document or other record related to a thing to which subparagraph (a) refers is or may be on the premises,

the judge may issue a search warrant.

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

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

Compliance notice

14. (1) Where an authorised officer is of the opinion that—

- (a) a contravention of the EU Regulations, the General Food Law Regulations or these Regulations may have taken place or may be taking place,
- (b) it is necessary for the protection of human health, animal health or welfare or the environment including the prevention, control or eradication of a disease or contamination of feed or food, or
- (c) it is necessary, ancillary or supplementary for EU Regulations to have full effect,

the officer may serve a notice (“compliance notice”) stating that opinion to the person—

- (i) who appears to be the owner, occupier, or person in charge of the premises, or
- (ii) in possession or control of food or feed of non-animal origin or other thing to which the notice relates.

- (2) A compliance notice shall—
- (a) require the person to whom it is served to take such action as specified in the notice,
 - (b) inform the person to whom it is served that he or she may appeal the notice in the District Court under Regulation 15, and
 - (c) state that if the person to whom it is served fails to comply with the notice, he or she commits an offence and is liable to a penalty set out in Regulation 24(1).

- (3) A compliance notice may require that—
- (a) food or feed be dealt with in a manner specified in the notice,
 - (b) such alterations be made to a premises or operations at a premises as the officer specifies in the notice,
 - (c) food or feed be disposed of in such manner as the officer specifies in the notice,
 - (d) a specified operation or activity cease on a premises,
 - (e) a specified operation or activity take place only in a manner specified in the notice,
 - (f) a specified type or level of sampling and analysis be undertaken for a period specified in the notice,
 - (g) a measure within the meaning of Article 138(2) of Regulation No 2017/625 be taken as specified in the notice,
 - (h) a specified operation or activity may only be carried out under and in accordance with such terms and conditions as are specified in the notice, or
 - (i) require a person to make such changes to a label, packaging or marketing material including re-labelling of food, feed or other thing as may be specified in the notice.

(4) A person to whom a compliance notice is served shall comply with it until the notice expires, is withdrawn under paragraph (6) or is annulled under Regulation 15, and not cause or permit another person to contravene the terms of the notice.

(5) A compliance notice may specify a time limit within which it is to be complied with.

(6) A compliance notice may be modified or withdrawn in a further notice and the earlier notice has effect subject to the modification or withdrawal.

(7) A compliance notice may require the owner, occupier, operator or person in charge of any premises, food, feed, vehicle, vessel, machinery, equipment or other thing to which the EU Regulations relates to choose between two or more of the requirements specified in the notice.

(8) A compliance notice shall include an address for service of an appeal under Regulation 15.

(9) A person on whom a compliance notice is served who fails to comply with, or causes or permits another person to contravene the notice, commits an offence.

Appeal against compliance notice

15. (1) A person to whom a compliance notice is served may, within 7 days from the date of service of the notice, appeal the notice to the Judge of the District Court having jurisdiction in the District Court district—

- (a) where the food, feed, premises, vehicle, machinery, equipment, vessel or other thing to which the EU Regulations relates which is the subject of the notice, is situated, or
- (b) where the person bringing the appeal ordinarily resides or carries on business,

on the grounds that the notice is unreasonable having regard to the EU Regulations, the General Food Law Regulations or these Regulations.

(2) Notice of an appeal shall contain a statement on the grounds upon which it is alleged that the notice or any of the terms of the notice are unreasonable and shall be served on the authorised officer who served the compliance notice at the address included on the notice in accordance with Regulation 14 not later than 48 hours prior to the hearing of the appeal.

(3) A person bringing an appeal shall lodge a copy of the notice or appeal with the District Court Clerk concerned not later than 48 hours prior to the hearing of the appeal.

(4) On the hearing of an appeal a Judge of the District Court may confirm, modify or annul a notice.

(5) A person, including a person on whom a compliance notice has been served, shall not—

- (a) pending the determination of an appeal, deal with food, feed, premises, vehicle, vessel, machinery, equipment or other thing to which the notice relates, other than in accordance with the terms of the compliance notice, or
- (b) if the notice is confirmed or modified on appeal, deal with food, feed, any premises, vehicle, vessel, equipment, machinery or other thing to which the notice relates other than in accordance with the terms of the compliance notice as confirmed or modified.

(6) In this Regulation “appeal” means an appeal under paragraph (1).

Seizure and detention for non-compliance with a compliance notice

16. (1) Without prejudice to an appeal under Regulation 15, if—

- (a) a person in control of food, feed or other thing to which a compliance notice relates, or in control of a premises, vessel, vehicle, equipment, machinery or other thing used in connection with food, feed or other thing to which a compliance notice relates fails to comply with the terms of a compliance notice within the time specified,
- (b) an authorised officer has reasonable grounds for believing that the terms of a compliance notice, whether or not modified under Regulation 15 (4), will not be complied with, or
- (c) a compliance notice has been confirmed with or without modification under Regulation 15(4) and the notice has not been complied with,

an authorised officer may at any time seize the food, feed or other thing to which a compliance notice relates, or seize the vessel, vehicle, equipment, machinery or other thing used in connection with food, feed or other thing to which a compliance notice relates.

(2) If the food, feed or other thing to which a compliance notice relates, a vessel, vehicle, equipment, machinery or other thing used in connection with food, feed or other thing to which a compliance notice relates is seized in accordance with paragraph (1), an authorised officer may—

- (a) sell, destroy or dispose of the food, feed or other thing to which a compliance notice relates or cause it to be sold, destroyed or be disposed of, or
- (b) take such other measures in relation to the food, feed or other thing to which a compliance notice relates, or in relation to the vessel, vehicle, equipment, machinery or other thing used in connection with food, feed or other thing to which a compliance notice relates as the authorised officer considers appropriate in the circumstances.

(3) Any profits arising out of the sale, destruction or disposal of food, feed or other thing to which a compliance notice relates in accordance with paragraph (2) shall be paid to the owner of the food, feed or other thing to which a compliance notice relates less any expenses incurred in connection with the seizure, sale, destruction or disposal.

(4) The costs (including ancillary costs) of a measure taken under this Regulation are recoverable by the Registering Authority—

- (a) as a simple contract debt in a court of competent jurisdiction from the person who was the owner of the food, feed or other thing to which the EU Regulations, the General Food Law Regulations or these Regulations relates or from the person who was the owner of the means of transport at the time the measure was carried out, or

- (b) by deducting the costs from any sum payable from the Minister to a person on whom a notice has been served.

(5) The costs of any action required by a compliance notice shall be borne by the owner of a premises, food or feed to which the notice relates.

Fixed Payment Notice

17. (1) If an officer of a registering authority authorised by the authority in that behalf has reasonable grounds for suspecting that a person is committing or has committed an offence under these Regulations (other than an offence under Regulation 23 (2)), he or she may serve a notice in writing (“fixed payment notice”) on that person stating that—

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

(2) Where a fixed payment notice is served under paragraph (1)—

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

(3) In proceedings for an offence under these Regulations, the onus of proving that a payment pursuant to a notice under this Regulation has been made lies on the person on whom the fixed payment notice was served.

(4) In proceedings for an offence referred to in paragraph (1) it is a defence for the accused to show that he or she has made a payment in accordance with this Regulation pursuant to a fixed payment notice issued in respect of that offence.

Fees

18. (1) The Minister shall charge a fee in accordance with Article 79(2)(a) of Commission Regulation 2017/625.

(2) A fee payable under this Regulation may be recovered by the Minister from the food business operator or his or her representative responsible for a consignment as a simple contract debt in a court of competent jurisdiction.

(3) Monies 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.

(4) The Minister may direct that a consignment be destroyed, or otherwise disposed of, where a food business operator or his or her representative has failed to pay a fee payable under this Regulation.

(5) A fee set under the Regulations revoked by Regulation 26 remains payable and may be recovered by the Minister from the person by whom it is payable as a simple contract debt in a court of competent jurisdiction.

Obstruction and false statements

19. A person who—

- (a) obstructs, interferes with or impedes an authorised officer, or any person who accompanies an authorised officer, in the course of exercising a function conferred on the officer under these Regulations,
- (b) fails or refuses, without reasonable cause, to comply with a requirement of an authorised officer under Regulation 12,
- (c) fails, without reasonable cause, to give assistance or requested information to an authorised officer in accordance with Regulation 12, or
- (d) in purporting to give information to an authorised officer for the exercise of the officer's functions under these Regulations—
 - (i) makes a statement that he or she knows to be false or misleading in a material particular or recklessly makes a statement which is false or misleading in a material particular, or
 - (ii) intentionally fails to disclose a material particular,
- (e) tampers or otherwise interferes with a sample taken under Regulation 12,
- (f) aids or abets a contravention of the EU Regulations, the General Food Law Regulations or these Regulations,

commits an offence.

Data Sharing

20. (1) Information, 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 2016 and section 69 of the Data Protection Act 2018) held by—

- (a) the Minister,
- (b) the Food Safety Authority of Ireland,
- (c) a body or individual to whom a function under the EU Regulations, the General Food Law Regulations or these Regulations has been delegated,
- (d) the operator of a laboratory for the analysis of samples,

for the purposes of these Regulations, an act of the institutions of the European Union or the Act of 1998 may be exchanged by them with each other for the performance by them of their functions under those Acts or Regulations.

(2) Paragraph (1) is without prejudice to any other power of a competent authority to disclose information by or under an act of the institutions of the European Union.

Contravention of Regulation 2019/1793

21. A person who, by act or omission-

- (a) fails to comply with a requirement on a temporary increase of official controls in contravention of Article 5,
- (b) fails to comply with a requirement on entry into the Union in contravention of Article 7,
- (c) fails to comply with a requirement on a compound food in contravention of Article 8,
- (d) fails to comply with a requirement on identification in contravention of Article 9,
- (e) fails to comply with a requirement on accompanying documentation, information and reports in contravention of Article 10,
- (f) fails to comply with a requirement on official certificates in contravention of Article 11, or
- (g) otherwise contravenes a provision (mentioned in this Regulation)

of Regulation 2019/1793, commits an offence.

Contravention of Regulation No 2017/625

22. A person who, by act or omission—

- (a) being a delegated body or natural person to which specific official control tasks have been delegated or an official laboratory, fails to comply with an obligation of confidentiality in contravention of Article 8,

- (b) being an operator, fails to report the arrival of goods in contravention of Article 9(7),
- (c) being an operator, fails to comply with a requirement (obligations of operators) in contravention of Article 15,
- (d) being a body or natural person to which certain official control tasks or certain tasks related to other official activities have been delegated, fails to comply with an obligation in contravention of Article 32,
- (e) being an operator of an official laboratory, fails to comply with an obligation in contravention of Article 38,
- (f) being an operator, fails to present a consignment of the category of goods referred to in Article 47(1) (and to which these Regulations relate) at a border control post in contravention of Article 47(5),
- (g) being an operator, fails to present original official certificates or documents at a border control post in contravention of Article 50(1),
- (h) being an operator, splits a consignment in contravention of Article 50(3),
- (i) being an operator, fails to complete the Common Health Entry Document (CHED) in contravention of Article 56(1) or (3),
- (j) being an operator, fails to provide prior notification in contravention of Article 56(4),
- (k) being an operator, fails to comply with a direction in contravention of Article 69(1),
- (l) being an operator, re-dispatches a consignment in contravention of Article 72,
- (m) being an operator, fails to issue an official attestation in contravention of Article 91, or
- (n) otherwise contravenes a provision (mentioned in this Regulation)

of Regulation No 2017/625, commits an offence.

Contravention of these Regulations

23. (1) A person who, by act or omission-
- (a) contravenes Regulation 9(a) (b) or (e), 12 or 15(5) of these Regulations,
 - (b) obstructs or interferes with an authorised officer in the exercise of the officer's powers;
 - (c) fails to give assistance to an authorised officer, or person who accompanies the officer,

- (d) fails or refuses to state his or her name or address in compliance with a request of an authorised officer;
- (e) makes a statement to an authorised officer which the person knows is false or misleading;
- (f) gives information which is false or misleading;
- (g) imports products listed in Annex I to Regulation 2019/1793 but fails to submit a common health entry document in accordance with Regulation 9 (b) and Article 56(4) of Regulation 2017/625;
- (h) releases, for free circulation in the State, products listed in Annex I to Regulation 2019/1793, not having presented to the customs authorities a common health entry document, or its electronic equivalent in accordance with Article 56 of Regulation 2017/625;
- (i) tampers with any substance or sample with the result that the sample taken does not correctly represent the substance sampled;
- (j) fails to make available to the official agency resources, logistics and equipment required by the official agency pursuant to Regulation 9 (f);
- (k) fails to pay a fee required under Regulation 18;
- (l) splits a consignment of food listed in Annex I to Regulation 2019/1793 before the increased level of controls provided for in that Regulation have been completed and the common health entry document has been completed by the Minister in accordance with Article 50(3) of Regulation 2017/625;
- (m) fails to ensure that an authenticated copy of the relevant common health entry document accompanies each part of a split consignment in accordance with Article 50(2) of Regulation 2017/625;
- (n) provides misleading information in relation to a proposed re-dispatch of a consignment in accordance with Article 72 of Regulation 2017/625

commits an offence.

(2) A person who-

- (a) forges or alters, or utters knowing it to be forged or altered a common health entry document or other document required for the purposes of these Regulations;
- (b) tampers or interferes with any sample with intent to defraud or deceive

commits an offence.

(3) A statement or admission made by a person pursuant to a requirement under Regulation 12(10)(ii) is not admissible in evidence in proceedings brought against the person for an offence (other than an offence under this

Regulation for failing to give information or giving false information) under these Regulations.

Penalties & prosecutions

24. (1) A person who commits an offence under these Regulations (other than an offence under Regulation 23(2)) is liable-

- (a) on summary conviction, to a class A fine, or
- (b) on conviction on indictment to a fine not exceeding €500,000, or to imprisonment for a term not exceeding three years, or to both.

(2) A person who commits an offence under Regulation 23(2) is liable—

- (a) on summary conviction, to—
 - (i) a class A fine,
 - (ii) imprisonment for a term not exceeding 6 months,
 - (iii) the forfeiture of any consideration or advantage obtained in connection with the offence or, in the alternative, the forfeiture of land, cash or other property of an equivalent value to such consideration or advantage, or
 - (iv) any combination of the penalties referred to in subparagraphs (i) to (iii), or
- (b) on conviction on indictment, to—
 - (i) a fine not exceeding €500,000,
 - (ii) imprisonment for a term not exceeding 3 years,
 - (iii) the forfeiture of any consideration or advantage obtained in connection with the offence or, in the alternative, the forfeiture of land, cash or other property of an equivalent value to such consideration or advantage, or
 - (iv) any combination of the penalties referred to in subparagraphs (i) to (iii).

(3) An offence under these Regulations may be prosecuted summarily by the Minister or by the Food Safety Authority of Ireland.

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

(5) If the affairs of a body corporate are managed by its members, paragraph (4) applies in relation to the acts and defaults of a member in connection with the functions of management as if the member were a director or manager of the body corporate.

(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 Minister the costs and expenses, measured by the court, incurred by the Minister in 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 Minister.

(7) In proceedings alleging a contravention of these Regulations, it is a defence for the defendant to show he or she acted in accordance with a derogation or transitional measure laid down by an act of an institution of the European Union relevant to the subject of the offence it is alleged that he or she committed.

Evidence on certificate etc

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

- (a) that the person received a sample,
- (b) that, for the period specified in the certificate, the person had the sample in his or her possession,
- (c) that the person gave the sample to another person named in the certificate, or
- (d) the person carried out a procedure for the purpose of detecting in the sample, a substance or contamination or that the sample contained a substance as is, or was contaminated in a manner, specified in the certificate,

is (without proof of the signature of the person or that he or she is employed at the laboratory), unless the contrary is proved, evidence of the matters stated in the certificate.

(2) In proceedings for an offence under these Regulations the court may, if it considers that the interests of justice so require, direct that oral evidence of any matter stated in a certificate under paragraph (1) be given, and the court may for the purpose of receiving oral evidence adjourn the matter.

Revocations, savers etc

26. (1) The following are revoked-

- (a) The European Communities (Official Controls on the Import of Food of Non-Animal Origin for Pesticide Residues) Regulations 2011 (S.I. No. 426 of 2011);
- (b) the European Communities (Official Controls on the Import of Food of Non-Animal Origin for Pesticide Residues) (Amendment) (No.4) Regulations 2014 (S.I. No. 500 of 2014);

(c) the European Communities (Official Controls on the Import of Food of Non-Animal Origin for Pesticide Residues) (Amendment) Regulations 2019 (S.I. No. 248 of 2019).

(2) Any reference made in an instrument to Regulations revoked by paragraph (1) shall be construed as a reference to these Regulations.



GIVEN under my Official Seal,
14 January, 2020.

MICHAEL CREED,
Minister for Agriculture, Food and the Marine.

EXPLANATORY NOTE

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

These regulations introduce additional levels of controls on the import of certain food of non animal origin from specific third countries with regard to pesticide residues and on the import of certain feed of non animal origin from specific third countries.

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