



STATUTORY INSTRUMENTS.

S.I. No. 325 of 2017

EUROPEAN UNION (SPECIFIC CONDITIONS APPLICABLE TO THE
INTRODUCTION INTO THE UNION OF CONSIGNMENTS FROM
CERTAIN THIRD COUNTRIES DUE TO MICROBIOLOGICAL
CONTAMINATION) REGULATIONS 2017

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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 partial effect to Commission Implementing Regulation (EU) 2017/186 of 2 February 2017¹, hereby make the following regulations:

Part I

Preliminary

Citation

1. These Regulations may be cited as the European Union (Specific Conditions Applicable to the Introduction into the Union of Consignments from Certain Third Countries due to Microbiological Contamination) Regulations 2017.

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 foods listed in Annex I to EU Regulation 2017/186 delivered at one time and determined by an authorised officer to be of the same class or description, covered by the same document(s),

¹OJ No. L 29, 3.2.2017, p. 24.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 21st July, 2017.*

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;

“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 2017/186” means Commission Implementing Regulation (EU) 2017/186 of 2 February 2017¹;

“food business operator” means a food business operator engaged in the import of food covered by Annex I to EU Regulation 2017/186;

“General Food Law Regulation” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002² as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council of 22 July 2003³, Commission Regulation (EC) No. 575/2006 of 7 April 2006⁴, Commission Regulation (EC) No. 202/2008 of 4 March 2008⁵, Regulation (EC) No. 596/2009 of the European Parliament and of the Council of 18 June 2009⁶ and Regulation (EU) No. 652/2014 of the European Parliament and of the Council of 15 May 2014⁷;

“health certificate” means the health certificate required by Article 5 of EU Regulation 2017/186, a model for which is set out in Annex III to that Regulation, completed in an official language of the Member State where the designated point of entry is located 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;

“official agency” means the Health Service Executive, carrying out functions under these Regulations and EU Regulation 2017/186, pursuant to section 48 of the Act of 1998;

²OJ No. L 31, 1.2.2002, p. 1.

³OJ No. L 245, 29.9.2003, p. 4.

⁴OJ No. L 100, 8.4.2006, p. 3.

⁵OJ No. L 60, 5.3.2008, p. 17.

⁶OJ No. L 188, 18.7.2009, p. 14.

⁷OJ No. L 189, 27.6.2014, p. 1.

“Official Controls Regulation” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004⁸, as affected by the Corrigendum to Regulation (EC) No. 882/2004 of 28 May 2004⁹, as amended by Commission Regulation (EC) No. 1029/2008 of 20 October 2008¹⁰, Regulation (EC) No. 596/2009 of the European Parliament and of the Council of 18 June 2009¹¹, Commission Regulation (EU) No. 208/2011 of 2 March 2011¹² (as corrected by Commission Regulation (EU) No. 880/2011 of 2 September 2011¹³), Commission Regulation (EU) No. 563/2012 of 27 June 2012¹⁴, Council Regulation (EU) No. 517/2013 of 13 May 2013¹⁵ and Regulation (EU) No. 652/2014 of the European Parliament and of the Council of 15 May 2014¹⁶;

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

“third country” means a state that is not a Member State.

(2) A word or expression which is used in these Regulations and which is also used in EU Regulation 2017/186, 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 2017/186, 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. (1) The competent authority for the purposes of EU Regulation 2017/186 and of these Regulations shall be the Authority, or the official agency, as appropriate.

(2) The Authority shall submit biannual reports to the European Commission in accordance with Article 12 of EU Regulation 2017/186.

Carrying out of official controls

5. The Authority or the official agency, as the case may be, shall carry out official controls on consignments covered by EU Regulation 2017/186 in accordance with that Regulation and these Regulations.

⁸OJ No. L 165, 30.4.2004, p. 1.

⁹OJ No. L 191, 28.5.2004, p. 1.

¹⁰OJ No. L 278, 21.10.2008, p. 6.

¹¹OJ No. L 188, 18.7.2009, p. 14.

¹²OJ No. L 58, 3.3.2011, p. 29.

¹³OJ No. L 228, 3.9.2011, p. 8.

¹⁴OJ No. L 168, 28.6.2012, p. 24.

¹⁵OJ No. L 158, 10.6.2013, p. 1.

¹⁶OJ 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 where that is required to fulfil its obligations under EU Regulation 2017/186 and the place and duration of such detention shall be determined by the Authority or the official agency, as appropriate.

Import conditions

7. In the case of consignments dispatched from third countries—

- (a) food business operators may only import the consignment through the designated point of entry in the State for the particular food;
- (b) 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 II to EC Regulation 669/2009;

- (c) 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 2017/186;
- (d) food business operators shall ensure that the sampling and analysis referred to in paragraph (c) is carried out in accordance with Article 4(2) of EU Regulation 2017/186;
- (e) food business operators shall, at the time of presentation for import into the State, present a health certificate which is—
 - (i) in accordance with the model set out in Annex III to EU Regulation 2017/186,
 - (ii) signed and stamped by an authorised representative of the competent authority of the third country of dispatch in accordance with Article 5(2) of EU Regulation 2017/186, and
 - (iii) issued not more than four months prior to the date of presentation of the food for import but no longer than six months from the date of the last microbiological laboratory analysis in accordance with Article 5(4) of EU Regulation 2017/186;
- (f) food business operators shall ensure that each consignment is identified with an identification code (consignment code) which corresponds to the identification code on the results of sampling and analysis and the health certificate, and that each individual bag or other

packaging form of the consignment is identified with that identification code;

- (g) food business operators shall ensure that the original of the common entry document, the results of sampling and analysis referred to in paragraph (c) and the health certificate referred to in paragraph (e) shall accompany a consignment during its transport until it is released into free circulation in accordance with Article 8(5) of EU Regulation 2017/186;
- (h) food business operators shall ensure that consignments are not split until all checks have been completed and the common entry document has been fully filled in by the official agency at the designated point of entry as provided for in Article 8 of EU Regulation 2017/186;
- (i) 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 during its transport and until it is released for free circulation in accordance with Article 9(2) of EU Regulation 2017/186; and
- (j) the release for free circulation of consignments shall be subject to the presentation by the food business operator, or its representatives, to the customs authorities of a common entry document, or its electronic equivalent, duly filled in by the official agency at the designated point of entry once all official controls required by EU Regulation 2017/186 have been carried out and favourable results from physical checks, where such checks are required, are known in accordance with Article 10 of EU Regulation 2017/186.

Part 3

Fees, Enforcement and Sanctions

Fees

8. (1) The Authority and the official agency shall, pursuant to Article 13 of EU Regulation 2017/186, 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 in case of non-compliance.

(2) The food business operator responsible for the particular consignment 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

9. 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

10. (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 other than through the designated point of entry in the State for the particular food, contrary to Regulation 7(a) and Article 3(b) of EU Regulation 2017/186;
- (h) imports a consignment 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(b) and Article 7 of EU Regulation 2017/186;
- (i) imports a consignment but fails to submit the results of sampling and analysis in accordance with Regulation 7(c) and Article 4(1) of EU Regulation 2017/186;

- (j) fails to ensure that the sampling and analysis is performed in accordance with Regulation 7(d) and Article 4(2) of EU Regulation 2017/186;
- (k) imports a consignment but fails to present a health certificate in accordance with Regulation 7(e) and Article 5 of EU Regulation 2017/186;
- (l) fails to fully and properly identify a consignment with an identification code, in accordance with Regulation 7(f) and Article 6 of EU Regulation 2017/186;
- (m) fails to ensure that a consignment is accompanied by the original of the common entry document, the results of sampling and analysis and the health certificate during its transport until it is released into free circulation, contrary to Regulation 7(g) and Article 8(5) of EU Regulation 2017/186;
- (n) splits a consignment otherwise than in accordance with Regulation 7(h) and Article 9(1) of EU Regulation 2017/186;
- (o) 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(i) and Article 9(2) of EU Regulation 2017/186;
- (p) releases a consignment for free circulation in the State not having presented to the custom authorities a common entry document, or its electronic equivalent, duly filled in by the official agency in accordance with Regulation 7(j) and Article 10 of EU Regulation 2017/186;
- (q) fails to pay a fee payable pursuant to Regulation 8;
- (r) 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”);
- (s) 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”);
- (t) 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;
- (u) 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

- (v) 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).

(8) Notwithstanding paragraph (2)(i), (k) and (l), a person who imports a consignment which left the third country of dispatch before 22 February 2017, and fails to—

- (a) submit the results of sampling and analysis in accordance with Regulation 7(c) and Article 4(1) of EU Regulation 2017/186,
- (b) submit a health certificate in accordance with Regulation 7(e) and Article 5 of EU Regulation 2017/186, or

- (c) identify the consignment(s) with a code in accordance with Regulation 7(f) and Article 6 of EU Regulation 2017/186

is not guilty of an offence.

Prosecution of offences

11. 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.

Revocation

12. The European Union (Specific Conditions Applicable to the Import of Foodstuffs Containing or Consisting of Betel Leaves from India) Regulations 2016 (S.I. No. 554 of 2016) are revoked.



GIVEN under my Official Seal, 2017
19 July 2017.

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 partial effect to Commission Implementing Regulation (EU) 2017/186 of 2 February 2017 laying down specific conditions applicable to the introduction into the Union of consignments from certain third countries due to microbiological contamination.

These Regulations may be cited as the European Union (Specific Conditions Applicable to the Introduction into the Union of Consignments from Certain Third Countries due to Microbiological Contamination) Regulations 2017.

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.

These Regulations revoke the European Union (Specific Conditions Applicable to the Import of Foodstuffs Containing or Consisting of Betel Leaves from India) Regulations 2016 (S.I. No. 554 of 2016).

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