



STATUTORY INSTRUMENTS.

S.I. No. 384 of 2011

EUROPEAN COMMUNITIES (MARKETING OF FRUIT PLANT
PROPAGATING MATERIAL) REGULATIONS 2011

(Prn. A11/1260)

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I, SIMON COVENEY, Minister for Agriculture, Fisheries and Food, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) for the purpose of giving effect to Council Directive 2008/90/EC of 29 September 2008¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Marketing of Fruit Plant Propagating Material) Regulations 2011.

Interpretation

2. (1) in these Regulations—

“authorised officer” means—

- (a) a person appointed under Regulation 9,
- (b) a member of the Garda Síochána, or
- (c) an officer of Customs and Excise;

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

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

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

Application

3. (1) These Regulations apply to—

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

¹O.J. L267, 8.10.2008, p. 8

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 19th July, 2011.*

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

General Requirements

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

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

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

- (a) the propagating material or fruit plant is subject to a consent under the Genetically Modified Organisms (Deliberate Release) Regulations 2003 (S.I. No. 500 of 2003), or
- (b) the propagating material or fruit plant is authorised under Regulation (EC) No. 1829/2003 of the European Parliament and of the Council of 22 September 2003².

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

- (a) for trials or scientific purposes,
- (b) for selection work, or
- (c) to help preserve genetic diversity.

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

Registration

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

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

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

²O.J. L268, 18.10.2003, p. 1

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

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

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

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

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

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

Conditions of Registration

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

- (a) identify and monitor critical points in the production process that influence quality,
- (b) take samples for analysis as required,
- (c) ensure that lots of propagating material remain separate during production,
- (d) maintain records of the activities listed in subparagraphs (a), (b) and (c), and
- (e) maintain records referred to in subparagraph (d), and sales and purchase records in relation to marketing of propagation material and fruit plants for at least 3 years.

- (2) If a person believes that a harmful organism—
- (a) listed in the Annexes to Directive 2000/29/EC is present on his or her premises, or
 - (b) is present on his or her premises at a higher level than the level allowed in Article 4 of the Directive,

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

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

Variety Identification

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

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

- (3) For the purposes of paragraph (1), a variety means—
- (a) a legally protected plant variety,
 - (b) an officially recognised plant variety,
 - (c) a commonly known plant variety, within the meaning of Article 7 of the Directive.

Labelling

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

- (a) the propagating material or fruit plants qualify as “CAC material” and is accompanied by a document completed by the supplier and detailing—
 - (i) the propagation system applied,
 - (ii) the purity of the crop,
 - (iii) the plant health,
 - (iv) varietal aspects unless the rootstock does not belong to a variety, or

(b) the propagating material or fruit plants are certified as “pre-basic”, “basic” or “certified material” by the Minister and is accompanied by a document completed by the supplier and detailing—

(i) quality (including, for pre-basic and basic material, methods for the maintenance of the identity of the variety and, where applicable, of the clone, including the relevant pomological characteristics),

(ii) the propagation system(s) applied,

(iii) the purity of the crop,

(iv) the plant health,

(v) the testing methods and procedures applied, and

(vi) varietal aspects unless the rootstock does not belong to a variety.

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

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

Appointment of authorised officer

9. (1) The Minister may, by instrument in writing, appoint such and so many persons or a class of persons as he or she thinks fit to be authorised officers for the purposes of some or all of the functions of an authorised officer as may be specified in the instrument.

(2) The Minister may terminate the appointment of an authorised officer appointed by him or her and the Minister may terminate an appointment under paragraph (1), whether or not the appointment was for a fixed period.

(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, or

(c) 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 paragraph (3) relates.

(5) An officer of the Minister shall furnish an authorised officer (other than an officer of Customs and Excise or member of the Garda Síochána) with a warrant of his or her appointment as an authorised officer and, when exercising a power conferred on him or her, the officer, officer of Customs and Excise or 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

10. (1) If an authorised officer has reasonable cause to suspect that—
- (a) a fruit plant or propagating material, a vessel, vehicle or trailer used in connection with a fruit plant or propagating material is present, has been present or may be present on a premises,
 - (b) a fruit plant or propagating material is or has been kept, processed, stored or otherwise dealt with on a premises,
 - (c) a fruit plant, propagating material or a vessel, vehicle or trailer, equipment, plant or machinery used in connection with a fruit plant or propagating material has been held in possession or control, imported, exported, processed, stored or otherwise dealt with in contravention of a Regulation of an institution of the European Union,
 - (d) a document relating to a fruit plant or propagating material referred to in paragraph (a), (b) or (c) is present, was present or may be present on a premises, the authorised officer may enter the premises and he or she may—
 - (i) search the premises,
 - (ii) stop a person, vehicle, vessel or container,
 - (iii) board and search a vehicle, vessel or container,
 - (iv) examine a fruit plant or propagating material, a vehicle, vessel, container, equipment, machinery or other thing,
 - (v) take, without payment, samples of a fruit plant or propagating material or an article, substance or liquid as he or she may reasonably require and carry out or cause to be carried out on a sample such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
 - (vi) require the production of a document (including a document in non-legible form in a legible form) or thing relating to these Regulations, vehicle, vessel, container, equipment, machinery or other thing,
 - (vii) retain a document or thing (for so long as is necessary),

- (viii) make a record using any means including writing, photography or video,
 - (ix) give a direction to, or request information of, a person regarding a fruit plant or propagating material, a vessel, vehicle, container, machinery, equipment, premises or other thing as he or she considers necessary,
 - (x) require the name and address of a person and the name and address of any other person including the owner of, or person to whom a fruit plant or propagating material or other thing is being delivered or who is causing it to be delivered,
 - (xi) require of a person the ownership, identity and origin of a fruit plant or propagating material, a vessel, vehicle, container, equipment, machinery or other thing,
 - (xii) require a person in charge or control of a vessel, vehicle or container to refrain from moving it,
 - (xiii) carry out surveys or programmes as may be required by an act of the institutions of the European Union,
 - (xiv) mark or otherwise identify a fruit plant or propagating material, a vessel, vehicle, machinery, equipment or other thing or a sample taken under subparagraph (vi).
- (2) If an authorised officer has reasonable cause to suspect that—
- (a) an offence is being or has been committed under Regulations made under the European Communities Act 1972 to which these Regulations apply,
 - (b) a contravention of an act of the institutions of the European Union is being or has been committed, or
 - (c) evidence of an offence or contravention to which paragraph (a) or (b) relate may be, is or has been on a premises — the authorised officer may, in addition to the powers exercisable by him or her under paragraph (1)—
 - (i) seize and detain a fruit plant or propagating material, a vessel, vehicle, container, equipment, machinery or other thing, or
 - (ii) dispose of, or require the owner or person in charge of or in possession of a fruit plant or propagating material to deal with or dispose of it (or any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with a thing in a manner that the authorised officer sees fit.

(3) An authorised officer may use reasonable force, if necessary, in the exercise of his or her powers under this Regulation.

(4) An authorised officer, when exercising a power 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 power.

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

(6) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions prohibiting, restricting or otherwise controlling the use, processing or movement of a fruit plant or propagating material, a vessel, vehicle, container, equipment, machinery or other thing as may be specified by the authorised Officer.

(7) If a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under these Regulations, the member may without warrant arrest the person.

(8) If, in the course of exercising any powers under these Regulations, an authorised officer, officer of Customs and Excise or a member of the Garda Síochána finds or comes into possession of any thing that the officer or member believes to be evidence of an offence or suspected offence, it may be seized and retained for use in evidence in criminal proceedings.

(9) Nothing in these Regulations operates to prejudice a power conferred by another enactment to search, or to seize or detain property, which may be exercised by a member of an Garda Síochána or an officer of Customs and Excise.

Obstruction

12. A person who—

- (a) obstructs or impedes an authorised officer in the exercise of his or her powers under Regulation 10,
- (b) fails, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 10, or
- (c) in purporting to give information to an authorised officer for the performance of the officer's powers under Regulation 10—
 - (i) makes a statement that he or she knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or
 - (ii) fails to disclose a material particular, commits an offence.

Search warrant

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

- (a) an offence is being or has been committed under Regulations made under the European Communities Act 1972 to which these Regulations apply,
- (b) a contravention of an act of the institutions of the European Union is being or has been committed,
- (c) evidence of an offence or contravention or intended contravention to which paragraph (a) or (b) relate may be, is or has been on a premises,
- (d) there is or was a thing to which these Regulations relates or equipment or other thing made, used or adapted for use (including manufacture and transport) in connection with a fruit plant or propagating material, or
- (e) a document or other record related to a thing to which subparagraph (a), (b), (c) or (d) 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 pursuant to 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.

Notice

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

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

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

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

Forgery

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

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

Service

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

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

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

(3) A person, other than the person to whom the notice refers, shall not at any time within 6 months after a notice under paragraph (1)(d), remove, damage or deface the notice without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Acts, is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

Offences

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

- (a) Article 4 of the Directive, or
- (b) Regulation 4, 5, 6, 7, 8 or 14 of these Regulations,

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

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

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

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

Evidence

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

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

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

officer of the Minister, evidence, unless the contrary is shown, of the matters stated in the certificate.

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

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

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

Revocation and savers

18. (1) The European Communities (Marketing of Fruit Plant Propagating Material) Regulations 2010 (S.I. No. 152 of 2010) are revoked.

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

(3) A registration issued under the Regulations revoked in paragraph (1) shall continue as if registered under Regulation 5.

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



GIVEN under my Official Seal,
5 July 2011.

SIMON COVENEY,
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

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

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

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
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CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
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