



STATUTORY INSTRUMENTS.

S.I. No. 168 of 2012

HEALTH (DEFINITION OF MARGINAL, LOCALISED AND
RESTRICTED ACTIVITY) (RETAIL CATERING ESTABLISHMENTS)
REGULATIONS 2012

(Prn. A12/0832)

HEALTH (DEFINITION OF MARGINAL, LOCALISED AND
RESTRICTED ACTIVITY) (RETAIL CATERING ESTABLISHMENTS)
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I, JAMES REILLY, Minister for Health, in exercise of the powers conferred on me by section 54 (inserted by section 25 of the Irish Medicines Board (Miscellaneous Provisions) Act 2006 (No. 3 of 2006)) of the Health Act 1947 (No. 28 of 1947) (as adapted by the Enterprise, Trade and Innovation (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 245 of 2011) and the Agriculture, Fisheries and Food (Alteration of Name of Department and Title of Minister) Order 2011 (S.I. No. 455 of 2011)), after consultation with the Minister for Jobs, Enterprise and Innovation and the Minister for Agriculture, Food and the Marine, hereby make the following regulations:

1. (1) These Regulations may be cited as the Health (Definition of Marginal, Localised and Restricted Activity) (Retail Catering Establishments) Regulations 2012.

(2) These Regulations come into operation on 1 June 2012.

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 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;

“food business operator” means a food business operator of a retail catering establishment engaged in the supply of food of animal origin from a retail catering establishment;

“official agency” means an official agency carrying out functions under a service contract and acting on behalf of the Authority pursuant to section 48 of the Act of 1998;

“retail catering establishment” means any retail establishment involved in catering including hotels, restaurants, bakeries, public houses providing food, healthcare establishments, catering service providers, takeaway food service outlets, shops and central production units in such establishments;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 29th May, 2012.*

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

(2) These Regulations define “marginal, localised and restricted activity” for the purposes of Article 1(5)(b)(ii) of Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004¹ laying down specific hygiene rules for food of animal origin and Regulation 2(1) of the European Communities (Hygiene of Foodstuffs) Regulations 2006 (S.I. No. 369 of 2006) in relation to retail catering establishments.

(3) A food business operator’s supply of food of animal origin to other retail establishments shall be regarded as “marginal, localised and restricted” only if all of the requirements of Regulation 3 are complied with.

3. An activity may be regarded as “marginal, localised and restricted” only if the food business operator’s total supply of food of animal origin (to all customers, including retail establishments) which is produced in his or her establishment is on average—

(a) less than 500kg per week, or

(b) where the retail establishments supplied are under the same ownership as the food business operator, less than 1,000 kg per week,

and the food business operator supplies food of animal origin which is produced in his or her establishment to other retail establishments only within 100km of the supplying establishment.

4. (1) Where a food business operator contends that an activity is “marginal, localised and restricted”, as defined in Regulation 3, the food business operator shall bear the onus of proving that the activity complies with the requirements of Regulation 3 of these Regulations.

(2) An activity shall be presumed not to be “marginal, localised and restricted” until the contrary is proven by the food business operator.

(3) In order to prove that an activity is “marginal, localised and restricted” as defined in Regulation 3, the food business operator shall produce, at the request of an authorised officer, all documents or records which prove that the activity satisfies the requirements of Regulation 3.

(4) Where the food business operator maintains electronic records or other such records in a non-legible form, the food business operator shall provide an authorised officer, on request, with copies of or extracts from such records, in a permanent legible form.

¹OJ L 139, 30.4.2004, p. 55, as affected by the Corrigendum to Regulation (EC) No. 853/2004, OJ L 226, 25.6.2004, p. 22.

(5) Where a food business operator contends that an activity is “marginal, localised and restricted”, the food business operator shall maintain the records and documents referred to in paragraphs (3) and (4), and pertaining to such activity, for a period of not less than two years.

5. (1) These Regulations shall be enforced by the Authority, or by an official agency acting pursuant to a service contract with the Authority, or by both, and the enforcement provisions contained in the Act of 1998 shall apply for the purposes of ensuring compliance with the requirements of these Regulations.

(2) An authorised officer may, for the purposes of these Regulations, inspect and take copies of documents and records in the possession of a food business operator.

6. A person is guilty of an offence if he or she—

- (a) obstructs or interferes with an authorised officer in the exercise of the officer’s powers under these Regulations,
- (b) fails or refuses to produce records or documents, or copies thereof, in accordance with Regulation 4,
- (c) fails to maintain documents and records in accordance with Regulation 4(5),
- (d) fails to comply with a request under these Regulations from an authorised officer,
- (e) makes a statement to an authorised officer which the person knows to be false or misleading,
- (f) provides records or documents, or copies thereof, which the food business operator knows to be false or misleading in content,
- (g) forges, or alters with intent to defraud or deceive, any document or record required to be produced or maintained pursuant to Regulation 4, or
- (h) gives in purported compliance with a requirement a name, address or other corroborative evidence which is false or misleading.

7. 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.

8. An offence under these Regulations may be prosecuted by either—

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



GIVEN under my Official Seal,
24 May 2012.

JAMES REILLY,
Minister for Health.

EXPLANATORY NOTE

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

These Regulations are intended to define “marginal, localised and restricted activity” as referred to in Article 1(5)(b)(ii) of Regulation (EC) No. 853/2004 of the European Parliament and of the Council of 29 April 2004 laying down specific hygiene rules for food of animal origin, and as referred to in Regulation 2(1) of the European Communities (Hygiene of Foodstuffs) Regulations 2006. These Regulations apply to food business operators supplying food of animal origin from a retail catering establishment or retail bakery to other retail establishments.

These Regulations may be cited as the Health (Definition of Marginal, Localised and Restricted Activity) (Retail Catering Establishments) Regulations 2012 and come into operation on 1 June 2012.

BAILE ÁTHA CLIATH
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 CONTAE MHAIGH EO,
 (Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
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