



STATUTORY INSTRUMENTS.

**S.I. No. 628 of 2016.**



EUROPEAN UNION (CASEINS AND CASEINATES) REGULATION,  
2016

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2016

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 effect to Directive (EU) 2015/2203 of the European Parliament and of the Council of 25 November 2015<sup>1</sup>, hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the European Union (Caseins and Caseinates) Regulations 2016.

*Interpretation*

2. (1) In these Regulations—

“authorised officer” means—

(a) an officer appointed under Regulation 5, or

(b) an authorised officer within the meaning of the European Communities (Food and Feed Hygiene) Regulations 2009 (S.I. 432 of 2009);

“Directive” means Directive (EU) 2015/2203 of the European Parliament and of the Council of 25 November 2015;

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

*Placing on market*

3. A person shall not place on the market a product mentioned in Article 2 of the Directive other than in accordance with Article 3 of the Directive.

*Labelling*

4. A person shall not place on the market a product mentioned in Article 2 of the Directive unless it is labelled in accordance with Article 4 of the Directive.

*Appointment of Authorised Officers*

5. (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.

<sup>1</sup>OJ L 314, 1.12.2015, p.1

*Notice of the making of this Statutory Instrument was published in  
“Iris Oifigiúil” of 27th December, 2016.*

(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 in accordance with paragraph (2),
- (b) if it is for a fixed period, on the expiration 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 re-appointing as an authorised officer a person to whom paragraph (3) relates.

(5) An authorised officer appointed under this Regulation shall be furnished with a warrant of his or her appointment and, when exercising a function conferred on him or her as an authorised officer, the officer shall, if requested by a person affected, produce the warrant, or other evidence that he or she is such an officer, for inspection.

*Functions of authorised officer*

6. (1) For the purposes of the Directive or these Regulations an authorised officer may—

- (a) enter and inspect, at all reasonable times, any premises where he or she has reasonable grounds for believing that—
  - (i) milk or other thing to which the Directive or these Regulations relates is, may be or has been present,
  - (ii) a record relating to milk or other thing to which the Directive 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 milk or other thing to which the Directive or these Regulations relates is, may be or has been present,
- (b) examine equipment, machinery, a vehicle, a vessel or other thing used in connection with milk or other thing to which the Directive or these Regulations relates,
- (c) require the name and address of the owner, or person in possession or control of equipment, machinery, a vehicle, a vessel used in connection with milk or other thing to which the Directive or these Regulations relate, or require details of place of departure, journey or destination,

- (d) inspect equipment, machinery, a vehicle, a vessel used in connection with milk or other thing to which the Directive or these Regulations relate 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 vehicle, a vessel used in connection with milk or other thing to which the Directive or these Regulations relate, 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 a record, document or extracts from the record or document 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 milk or other thing to which the Directive or these Regulations relate, 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.
- (2) An authorised officer may require a person to give information regarding the ownership and identity of equipment, machinery, a vehicle, a vessel or other thing used in connection with milk or other thing to which the Directive or these Regulations relate as is in the person's knowledge or procurement.
- (3) Where an authorised officer has reasonable grounds for believing that an offence is being or has been committed under the Directive or these Regulations, the officer may, in addition to the powers exercisable by him or her under paragraph (1)—
- (a) search any premises,
  - (b) search the equipment, machinery, vehicle, vessel or other thing used in connection with milk or other thing to which the Directive or these Regulations relate,
  - (c) require a person in charge or control of the equipment, machinery, vehicle, vessel or other thing used in connection with milk or other thing to which the Directive or these Regulations relate to—
    - (i) refrain from moving it or move it to a location where it may be searched, or

- (ii) give information regarding its ownership, place of departure, journey or destination,
  - (d) seize and detain, for as long as is necessary, milk, record, document or other thing to which the Directive or these Regulations relate and mark or otherwise identify it,
  - (e) detain any equipment, machinery, vehicle, vessel or other thing used in connection with milk or other thing to which the Directive or these Regulations relate for such reasonable period necessary for the purposes of permitting an inspection or a search under this Regulation or the Directive either at the place where it was first detained or require it to be moved to such other location as the authorised officer requires,
  - (f) remove any equipment, machinery, vehicle, vessel or other thing used in connection with milk or other thing to which the Directive or these Regulations relate, or remove documents or records, and detain them for such reasonable period necessary for the purpose of his or her functions under these Regulations,
  - (g) give such direction to a person who has milk or other thing to which the Directive or these Regulations relate, or who has equipment, machinery, vehicle or vessel or other thing used in connection with milk or other thing to which the Directive or these Regulations relate 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 7.
- (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) 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.

(9) A person who has—

- (a) milk or other thing to which the Directive or these Regulations relate, or
- (b) equipment, machinery, a vehicle, a vessel or other thing used in connection with milk or other thing to which the Directive or these Regulations relate 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.

(10) The owner or person in charge of any premises used in connection with milk or other thing to which the Directive or these Regulations relate 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.

(11) 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 milk or other thing to which the Directive or these Regulations relate,
- (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.

(12) A person who tampers with a sample taken under this Regulation commits an offence and is liable on summary conviction to a class A fine.

#### *Search warrant*

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

- (a) there is evidence on any premises of or relating to the commission or intended commission of an offence under the Directive or these Regulations relating to milk or other thing to which the Directive or these Regulations relate,

- (b) there is or was on a premises milk or other thing to which the Directive or these Regulations relate or equipment or other thing made, used or adapted for use (including manufacture or transport) in connection with milk or other thing to which the Directive or these Regulations relate, or
- (c) a record related to a thing to which subparagraph (a) or (b) relates is or may be on the premises,

then 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, to enter the premises named in the warrant and to exercise all or any of the functions conferred on an authorised officer under these Regulations.

*Compliance notice*

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

- (a) a contravention of the Directive or these Regulations may have taken place, may be taking place,
- (b) there is a risk to public health, or
- (c) there is an issue in relation to the labelling of a product to which the Directive or these Regulations relate,

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 milk 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 9, 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 12.

(3) A compliance notice may—

- (a) require that the owner or a person in charge of a premises, where milk or other thing to which the Directive or these Regulations relate is present, detain, dispose of or destroy the milk or other thing in a manner and at a place (if any) specified in the notice,
  - (b) prohibit or regulate any activity specified in the notice, including prohibiting or restricting entry onto the premises specified in the notice,
  - (c) prohibit the transport or further transport of milk or other thing to which the Directive or these Regulations relates, either absolutely or unless such conditions as may be specified in the notice are complied with,
  - (d) require a person to return milk or other thing to which the Directive or these Regulations relate, to the place of departure (whether within the State or otherwise) by a route which in the opinion of the authorised officer is the most direct or prudent,
  - (e) require that such alterations or additions be made to any milk or other thing to which the Directive or these Regulations relate, or to a premises, vehicle, vessel, machinery or equipment as may be specified in the notice,
  - (f) require a person to undertake a specified type or level of sampling and analysis for a specified period,
  - (g) require a person to make such changes to a label, packaging or marketing material including re-labelling of milk or other thing as may be specified in the notice,
  - (h) to require a person to undertake such sampling or analysis or to sample or analyse the milk or other thing to which the Directive or these Regulations relate in such a manner as may be specified in the notice, or
  - (i) to maintain or produce such records as the authorised officer may specify in relation to the milk or other thing to which the Directive or these Regulations relate.
- (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 9, 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, milk, vehicle, vessel, machinery, equipment or other thing to which the Directive or these Regulations relate, 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 9.

(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*

9. (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 milk, premises, vehicle, machinery, equipment, vessel or other thing to which the Directive or these Regulations relate, 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 Directive 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 8(8) 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 milk, 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 milk, 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*

10. (1) Without prejudice to an appeal under Regulation 9, if—

- (a) a person in control of milk or other thing to which the Directive or these Regulations relate, or in control of a premises, vessel, vehicle, equipment, machinery or other thing used in connection with milk or other thing to which the Directive or these Regulations relate 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 will not be complied with,
- (c) a compliance notice has been confirmed with or without modification under Regulation 9(4) and the notice has not been complied with,
- (d) an authorised officer has reasonable grounds for believing that the terms of a compliance notice which has been confirmed with or without modification under Regulation 9(4) will not be complied with,

an authorised officer may at any time seize the milk or other thing to which the Directive or these Regulations relate, or seize the vessel, vehicle, equipment, machinery or other thing used in connection with milk or other thing to which the Directive or these Regulations relate.

(2) If milk or other thing to which the Directive or these Regulations relate, a vessel, vehicle, equipment, machinery or other thing used in connection with milk or other thing to which the Directive or these Regulations relate is seized in accordance with paragraph (1), an authorised officer may—

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

(3) Any profits arising out of the sale, destruction or disposal of milk or other thing to which the Directive or these Regulations relate in accordance with paragraph (2) shall be paid to the owner of the milk or other thing to which the Directive or these Regulations relate 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 Minister—

- (a) as a simple contract debt in a court of competent jurisdiction from the person who was the owner of the milk or other thing to which the Directive or these Regulations relate 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.

*Obstruction and false statements*

11. 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 6,
- (c) fails, without reasonable cause, to give assistance or requested information to an authorised officer in accordance with Regulation 6, 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,

commits an offence.

*Offences*

12. A person who contravenes or fails to comply with Regulation 3, 4, 6(3), 8(9) or 11 commits an offence and is liable on summary conviction to a class A fine.

*Prosecutions*

13. (1) An offence under these Regulations may be prosecuted summarily by the Minister.

(2) If an offence under these Regulations is committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any person who, when the offence is committed, is 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, is guilty of an offence and liable to be proceeded against and punished as if guilty of the first-mentioned 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 functions of management as if the member is a director or manager of the body corporate.

*Fixed payment notice*

14. (1) Where an officer of the Minister, authorised by the Minister in that behalf, has reasonable grounds for suspecting that a person is committing or has committed an offence under these Regulations, 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 Minister, 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 Minister, at the address specified in the notice, the payment specified in the notice accompanied by the notice,
- (b) the Minister 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 in accordance with a fixed payment notice 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.

*Revocation and saver*

15. (1) The following Regulations are revoked—

(a) European Communities (Caseins and Caseinates) Regulations 1985 (S.I. No. 248 of 1985), and

(b) European Communities (Caseins and Caseinates) (Methods of Sampling and Analysis) Regulation 1987 (S.I. No. 123 of 1987).

(2) Any reference to a Regulation mentioned in paragraph (1) shall be construed as a reference to these Regulations.



GIVEN under my Official Seal,  
16 December 2016.

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

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nó trí aon díoltóir leabhar.

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DUBLIN  
PUBLISHED BY THE STATIONERY OFFICE  
To be purchased from  
GOVERNMENT PUBLICATIONS,  
52 ST. STEPHEN'S GREEN, DUBLIN 2.  
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)  
or through any bookseller.

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€3.81



Wt. (B32508). 285. 12/16. Essentra. Gr 30-15.