



STATUTORY INSTRUMENTS.

S.I. No. 650 of 2011

EUROPEAN UNION (SPECIAL CONDITIONS GOVERNING THE
IMPORT OF CERTAIN FOODSTUFFS FROM CERTAIN THIRD
COUNTRIES DUE TO CONTAMINATION RISK BY AFLATOXINS)
REGULATIONS 2011

(Prn. A11/2322)

EUROPEAN UNION (SPECIAL CONDITIONS GOVERNING THE
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I, JAMES REILLY, 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 effect to Commission Regulation (EC) No. 1152/2009 of 27 November 2009¹, hereby make the following regulations:

PART I

PRELIMINARY

1. These Regulations may be cited as the European Union (Special Conditions Governing the Import of Certain Foodstuffs from Certain Third Countries Due to Contamination Risk by Aflatoxins) Regulations 2011.

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 (CED)” 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 English;

“consignment” means a quantity of the foodstuffs and the foodstuffs processed and compound thereof imported from third countries covered by Article 1(1) of EC Regulation 1152/2009 of the same class or description, covered by the same document(s), conveyed by the same means of transport and coming from the same third country or part of such country;

“designated points of import” means any point designated by the Authority, and listed on the website www.fsai.ie, through which the foodstuffs and the

¹OJ L 313, 28.11.2009, p. 40.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 20th December, 2011.*

foodstuffs processed and compound thereof referred to in Article 1(1) of EC Regulation 1152/2009 may be imported into the European Union;

“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);

“EC Regulation 1152/2009” means Commission Regulation (EC) No. 1152/2009 of 27 November 2009¹;

“first point of introduction” means the point of first physical introduction of a consignment into the European Union and, where the first physical introduction takes place in the State, the designated point of import for the foodstuff concerned;

“food business operator” means a food business operator engaged in the import of foodstuffs, or foodstuffs processed and compound thereof, covered by Article 1(1) of EC Regulation 1152/2009;

“General Food Law Regulation” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002²;

“health certificate” means the health certificate required by Article 4 of EC Regulation 1152/2009, a model for which is set out in Annex I to that Regulation, completed in an official language of the exporting country 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);

“official agency” means the Health Service Executive, carrying out functions under these Regulations and EC Regulation 1152/2009, pursuant to section 48 of the Act of 1998;

“Official Controls Regulation” means Regulation (EC) No. 882/2004 of the European Parliament and of the Council of 29 April 2004³, as affected by the Corrigendum to Regulation (EC) No. 882/2004 of 28 May 2004⁴, as amended by Council Regulation (EC) No. 301/2008 of 17 March 2008⁵, Commission Regulation (EC) No. 1029/2008 of 20 October 2008⁶, Commission Regulation (EC) No. 596/2009 of 18 June 2009⁷ and Commission Regulation (EU) No. 208/2011 of 2 March 2011⁸;

“official detention” has the meaning assigned to it by Article 2(13) of the Official Controls Regulation.

²OJ L 31, 1.2.2002, p. 1.

³OJ L 165, 30.4.2004, p. 1.

⁴OJ L 191, 28.5.2004, p. 1.

⁵OJ L 97, 9.4.2008, p. 85.

⁶OJ L 278, 21.10.2008, p. 6.

⁷OJ L 188, 18.7.2009, p. 14.

⁸OJ L 58, 3.3.2011, p. 29.

(2) A word or expression which is used in these Regulations and which is also used in EC Regulation 1152/2009, the General Food Law Regulation or the Official Controls Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in the EC Regulation, the General Food Law Regulation or the Official Controls Regulation.

(3) (a) A reference in these Regulations to a Regulation is to a Regulation of these Regulations, unless it is indicated that reference to some other Regulations is intended.

(b) A reference in these Regulations to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

(c) A reference in these Regulations to an Article is to an Article of EC Regulation 1152/2009, unless it is indicated that reference to some other instrument is intended.

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

PART 2

GENERAL PROVISIONS

4. The competent authority for the purposes of EC Regulation 1152/2009 and of these Regulations shall be the Authority, or the official agency, as appropriate.

5. The Authority or the official agency, as the case may be, shall carry out official controls on consignments of foodstuffs covered by EC Regulation 1152/2009 in accordance with that Regulation.

6. The Authority or the official agency, as the case may be, may order the official detention of consignments of foodstuffs where that is required to fulfil its obligations under EC Regulation 1152/2009. The place and length of such detention shall be determined by the Authority or the official agency, as appropriate.

7. (1) In the case of foodstuffs, or the foodstuffs processed and compound thereof, imported from third countries and covered by Article 1(1) of EC Regulation 1152/2009—

(a) food business operators may only import consignments of such foodstuffs into the State through the designated point of import for the particular foodstuff;

(b) where the first physical introduction of the consignment into the European Union is to take place in the State, it must take place at the designated point of import for the particular foodstuff;

- (c) food business operators or their representatives shall, at least one working day prior to the physical arrival of a consignment of such foodstuffs, notify the official agency at the first point of introduction of the arrival and nature of the consignment, by means of Part I of the common entry document, taking into account the notes for guidance laid down in Annex II to EC Regulation 1152/2009;
- (d) where such food is not presented for official controls, or is not presented in accordance with any specific requirements established in accordance with EC Regulation 1152/2009, the official agency shall 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 21 of the Official Controls Regulation;
- (e) consignments of such food shall be subject to official controls at designated points of import, in accordance with Article 7 of EC Regulation 1152/2009;
- (f) the release for free circulation of consignments of such food shall be subject to the presentation by the food business operator or their representative to the custom authorities of a common entry document, or its electronic equivalent, duly completed by the official agency once all official controls required by EC Regulation 1152/2009 have been carried out and favourable results from physical checks, where such checks are required, are known;
- (g) where the official agency informs the food business operator that a consignment of such food has special characteristics within the meaning of Article 6(3) of EC Regulation 1152/2009, the food business operator shall make available to the official agency the resources, logistics and equipment referred to in that Article;
- (h) sampling and analysis for the official control shall be carried out in accordance with Commission Regulation (EC) No. 401/2006, or equivalent;
- (i) in addition to the requirements of subparagraph (h), sampling and analysis for the official control of aflatoxins shall be in accordance with Part 4 of the European Communities (Certain Contaminants in Foodstuffs) Regulations 2010 (S.I. No. 218 of 2010);
- (j) save where the foodstuffs are those referred to in Article 1(1)(g) of EC Regulation 1152/2009, food business operators shall, at the time of presentation for import into the State from outside the European Union, present the results of sampling and analysis and a health certificate completed, signed and verified in accordance with Article 4 of EC Regulation 1152/2009 and issued not more than four months prior to the date of presentation of the foodstuffs for import;

- (k) where the foodstuffs are those referred to in Article 1(1)(f) of EC Regulation 1152/2009, the sampling and analysis referred to in subparagraph (j) must be performed by a laboratory approved for aflatoxin analysis by the United States Department of Agriculture and the health certificate must make reference to the Voluntary Aflatoxin Sampling Plan;
- (l) each consignment of foodstuffs must be identified with a code which corresponds to the code on the sampling and analysis results and the health certificate and each individual bag or other form of packaging of the consignment must be identified with that code;
- (m) consignments shall not be split until all official controls have been completed and the common entry document has been completed by the official agency in accordance with EC Regulation 1152/2009; and
- (n) where a consignment is subsequently split, an authenticated copy of the common entry document shall accompany each part of the consignment until it is released for free circulation.

(2) Paragraph (1) shall not apply to consignments of foodstuffs of a gross weight not exceeding 20 kg, or to processed or compound foodstuffs containing the foodstuffs referred to in Article 1(1)(b) to (g) of EC Regulation 1152/2009 in a quantity below 20%.

8. The official agency shall ensure that the designated points of import comply with the requirements set down in Article 6 of EC Regulation 1152/2009.

9. It shall be the responsibility of the Authority to ensure that the obligations set out in Article 23(7) of the Official Controls Regulation are met.

PART 3

FEEES AND SANCTIONS

10. (1) The Authority and the official agency shall, pursuant to Article 10 of EC Regulation 1152/2009, set and charge fees to cover the costs occasioned by the official controls carried out pursuant to EC Regulation 1152/2009.

(2) The food business operator responsible for the particular consignment, or representatives thereof, 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.

11. (1) A person is guilty of an offence if he or she fails to comply with these Regulations.

(2) Paragraph (1) shall not apply to an authorised officer or approved examiner acting in the course of his or her duties pursuant to these Regulations.

(3) 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) imports a consignment of foodstuffs into the State other than through the designated point of import for the particular foodstuff, contrary to Regulation 7(1)(a);
- (g) causes the first physical introduction of a consignment of foodstuffs into the European Union to take place at a place in the State other than the designated point of import for the particular foodstuff, contrary to Regulation 7(1)(b);
- (h) imports a consignment of foodstuffs but fails to submit a common entry document in accordance with Regulation 7(1)(c) and Article 5 of EC Regulation 1152/2009;
- (i) imports a consignment of foodstuffs but fails to submit the results of sampling and analysis and a health certificate in accordance with Regulation 7(1)(j) and Article 4(1) of EC Regulation 1152/2009;

- (j) imports a consignment of foodstuffs but fails to submit the results of sampling and analysis and a health certificate in accordance with Regulation 7(1)(k);
- (k) releases for free circulation in the State, a consignment of foodstuffs not having presented to the customs authorities a common entry document, or its electronic equivalent, duly completed by the official agency in accordance with Article 7(8) of EC Regulation 1152/2009;
- (l) 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 (hereafter in this Regulation referred to as “a forged document”);
- (m) 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 (hereafter referred to as “an altered document”);
- (n) 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;
- (o) 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;
- (p) tampers or interferes with any sample taken under these Regulations, with intent to defraud or deceive;
- (q) fails to make available to the official agency resources, logistics and equipment required by the official agency pursuant to Regulation 7(1)(g);
- (r) fails to pay a fee payable pursuant to Regulation 10;
- (s) fails to fully and properly identify a consignment of foodstuffs with a code, contrary to Regulation 7(1)(l);
- (t) splits a consignment of foodstuffs, contrary to Regulation 7(1)(m);
- (u) fails to ensure that an authenticated copy of the relevant common entry document accompanies each part of a consignment split in accordance with Regulation 7(1)(n);
- (v) transfers a consignment into the State, prior to its being released for free circulation, without an accompanying common entry document, contrary to Article 7(7) of EC Regulation 1152/2009;

- (w) provides misleading information in relation to a proposed re-dispatch of a consignment in accordance with Article 7 of EC Regulation 1152/2009.

(4) 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.

(5) 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.

(6) 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 3 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.

(7) 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.

12. 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.

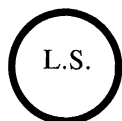
PART 4

REVOCATIONS

13. (1) The following are revoked:

- (a) the European Communities (Imposing Special Conditions on the Import of Figs, Hazelnuts and Pistachios and Certain Products Derived Thereof Originating in or Consigned from Turkey) Regulations 2002 (S.I. No. 79 of 2002),
- (b) the European Communities (Import of Peanuts and Certain Products Derived from Peanuts Originating in or Consigned from China) Regulations 2002 (S.I. No. 81 of 2002),
- (c) the European Communities (Imposing Special Conditions on the Import of Figs, Hazelnuts and Pistachios and Certain Products Derived Thereof Originating in or Consigned from Turkey) (Amendment) Regulations 2002 (S.I. No. 127 of 2002),
- (d) the European Communities (Import of Peanuts and Certain Products Derived from Peanuts Originating in or Consigned from China) (Amendment) Regulations 2002 (S.I. No. 135 of 2002), and
- (e) the European Communities (Special Conditions for the Import of Brazil Nuts in Shell Originating in or Consigned from Brazil) Regulations 2003 (S.I. No. 327 of 2003).

(2) References in any other instrument to the Regulations revoked under paragraph (1) shall be construed as references to these Regulations, as appropriate.



GIVEN under my Official Seal,
15 December 2011.

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 give effect to Commission Regulation (EC) No 1152/2009 of 27 November 2009 imposing special conditions governing the import of certain foodstuffs from certain third countries due to contamination risk by aflatoxins and repealing Decision 2006/504/EC. These Regulations revoke the European Communities (Imposing Special Conditions on the Import of Figs, Hazelnuts and Pistachios and Certain Products Derived Thereof Originating in or Consigned from Turkey) Regulations, 2002 (S.I. No. 79 of 2002), the European Communities (Import Of Peanuts and Certain Products Derived from Peanuts Originating in or Consigned from China) Regulations, 2002 (S.I. No. 81 of 2002), the European Communities (Imposing Special Conditions on the Import of Figs, Hazelnuts and Pistachios and Certain Products Derived Thereof Originating in or Consigned from Turkey) (Amendment) Regulations, 2002 (S.I. No. 127 of 2002), the European Communities (Import Of Peanuts and Certain Products Derived from Peanuts Originating in or Consigned from China) (Amendment) Regulations, 2002 (S.I. No. 135 of 2002) and the European Communities (Special Conditions for the Import of Brazil Nuts in Shell Originating in or Consigned from Brazil) Regulations 2003 (S.I. No. 327 of 2003).

These Regulations may be cited as the European Union (Special Conditions Governing the Import of Certain Foodstuffs from Certain Third Countries Due to Contamination Risk by Aflatoxins) Regulations 2011.

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.

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