



STATUTORY INSTRUMENTS.

**S.I. No. 575 of 2020**

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EUROPEAN UNION (OFFICIAL CONTROLS IN RELATION TO FOOD  
LEGISLATION) (IMPORTS OF FOOD OF NON-ANIMAL ORIGIN)  
REGULATIONS 2020

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REGULATIONS 2020

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EUROPEAN UNION (OFFICIAL CONTROLS IN RELATION TO FOOD  
LEGISLATION) (IMPORTS OF FOOD OF NON-ANIMAL ORIGIN)  
REGULATIONS 2020

I, Stephen Donnelly, 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 further effect to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017<sup>1</sup>, Commission Implementing Regulation (EU) 2019/1013 of 16 April 2019<sup>2</sup>, Commission Implementing Regulation (EU) 2019/1014 of 12 June 2019<sup>3</sup>, Commission Delegated Regulation (EU) 2019/1602 of 23 April 2019<sup>4</sup>, Commission Implementing Regulation (EU) 2019/1715 of 30 September 2019<sup>5</sup>, Commission Implementing Regulation (EU) 2019/1793 of 22 October 2019<sup>6</sup>, Commission Implementing Regulation (EU) 2019/2130 of 25 November 2019<sup>7</sup>, Commission Implementing Regulation (EU) 2020/625 of 6 May 2020<sup>8</sup> and Commission Implementing Regulation (EU) 2020/1540 of 22 October 2020<sup>9</sup>, hereby make the following regulations:

PART 1

PRELIMINARY

*Citation*

1. These Regulations may be cited as the European Union (Official Controls in relation to Food Legislation) (Imports of Food of Non-Animal Origin) Regulations 2020.

*Interpretation and scope*

2. (1) In these Regulations—

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<sup>1</sup> OJ No. L 95, 07.04.2017, p. 1, as affected by Corrigendum of 7 April 2017 (OJ No. L 137, 24.5.2017, p. 40).

<sup>2</sup> OJ No. L 165, 21.6.2019, p. 8.

<sup>3</sup> OJ No. L 165, 21.6.2019, p. 10.

<sup>4</sup> OJ No. L 250, 30.9.2019, p. 6.

<sup>5</sup> OJ No. L 261, 14.10.2019, p. 37, as affected by Corrigendum of 30 September 2019 (OJ No. L 303, 25.11.2019, p. 37).

<sup>6</sup> OJ No. L 277, 29.10.2019, p. 89.

<sup>7</sup> OJ No. L 321, 12.12.2019, p. 128.

<sup>8</sup> OJ No. L 144, 7.5.2020, p. 13.

<sup>9</sup> OJ No. L 353, 23.10.2020, p. 4.

“Act of 1998” means the Food Safety Authority of Ireland Act 1998 (No. 29 of 1998);

“Annex I to EU Regulation 2019/1793” means Annex I to Commission Implementing Regulation (EU) 2019/1793 of 22 October 2019<sup>6</sup> as amended by Commission Implementing Regulation (EU) 2020/625 of 6 May 2020<sup>8</sup>;

“Annex II to EU Regulation 2019/1793” means Annex II to Commission Implementing Regulation (EU) 2019/1793 of 22 October 2019<sup>6</sup> as amended by Commission Implementing Regulation (EU) 2020/625 of 6 May 2020<sup>8</sup> and Commission Implementing Regulation (EU) 2020/1540 of 22 October 2020<sup>9</sup>;

“Annex IIa to EU Regulation 2019/1793” means Annex IIa to Commission Implementing Regulation (EU) 2019/1793 of 22 October 2019<sup>6</sup> as inserted by Commission Implementing Regulation (EU) 2020/625 of 6 May 2020<sup>8</sup>;

“Annex III to EU Regulation 2019/1793” means Annex III to Commission Implementing Regulation (EU) 2019/1793 of 22 October 2019<sup>6</sup>;

“Annex IV to EU Regulation 2019/1793” means Annex IV to Commission Implementing Regulation (EU) 2019/1793 of 22 October 2019<sup>6</sup>;

“authorised officer” means an authorised officer appointed under section 49 of the Act of 1998;

“Authority” means the Food Safety Authority of Ireland;

“border control post” means a place, and the facilities belonging to it, designated by the State pursuant to Article 59(1) of the Official Controls Regulation, and listed on the website [www.fsai.ie](http://www.fsai.ie) for the performance of official controls on food of non-animal origin listed in Annex I to EU Regulation 2019/1793 and Annex II to EU Regulation 2019/1793;

“Common Health Entry Document” (CHED) means the document provided for in Chapter V of Title II of the Official Controls Regulation and EU Regulation 2019/1602, a model of which is set out in Section D of Part 2 of Annex II to the IMSOC Regulation, to be completed by an operator, or a representative thereof, and by the official agency confirming completion of official controls, completed in the official language, or one of the official languages of the Member States where the designated border control post is located and in English;

“consignment” means a quantity of food of non-animal origin covered by the same official certificate, official attestation or any other document, conveyed by the same means of transport and coming from the same territory or third country and being of the same type, class or description;

“EU Regulation 2019/1013” means Commission Implementing Regulation (EU) 2019/1013 of 16 April 2019<sup>2</sup>;

“EU Regulation 2019/1014” means Commission Implementing Regulation (EU) 2019/1014 of 12 June 2019<sup>3</sup>;

“EU Regulation 2019/1602” means Commission Delegated Regulation (EU) 2019/1602 of 23 April 2019<sup>4</sup>;

“EU Regulation 2019/1793” means Commission Implementing Regulation (EU) 2019/1793 of 22 October 2019<sup>6</sup> as amended by Commission Implementing Regulation (EU) 2020/625 of 6 May 2020<sup>8</sup> and Commission Implementing Regulation (EU) 2020/1540 of 22 October 2020<sup>9</sup>;

“EU Regulation 2019/2130” means Commission Implementing Regulation (EU) 2019/2130 of 25 November 2019<sup>7</sup>;

“food business operator” has the meaning assigned to it by Regulation 2(1) of the European Communities (General Food Law) Regulations 2007 (S.I. No. 747 of 2007);

“food legislation” means—

- (a) the Acts (including any instruments made thereunder) specified in Part I of the First Schedule to the Act of 1998 insofar as they relate to food safety and hygiene,
- (b) the statutory instruments specified in Part II of the First Schedule to the Act of 1998 insofar as they relate to food safety and hygiene,
- (c) the Regulations of an institution of the European Communities specified in Part III of the First Schedule to the Act of 1998 insofar as they relate to food safety and hygiene,
- (d) any Act passed by the Oireachtas or any statutory instrument made thereunder or regulation made under the European Communities Act 1972 (No. 27 of 1972) and deemed to be food legislation for the purposes of the Act of 1998;

“General Food Law Regulation” means Regulation (EC) No. 178/2002 of the European Parliament and of the Council of 28 January 2002<sup>10</sup>, as amended by Regulation (EC) No. 1642/2003 of the European Parliament and of the Council of 22 July 2003<sup>11</sup>, Commission Regulation (EC) No. 575/2006 of 7 April 2006<sup>12</sup>, Commission Regulation (EC) No. 202/2008 of 4 March 2008<sup>13</sup>, Regulation (EU) No. 652/2014 of the European Parliament and of the Council of 15 May 2014<sup>14</sup> and Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017<sup>15</sup>;

“IMSOC Regulation” means Commission Implementing Regulation (EU) 2019/1715 of 30 September 2019<sup>5</sup>;

“Member State” means a member state of the European Economic Area;

“official agency” means the Health Service Executive, carrying out functions under food legislation pursuant to section 48 of the Act of 1998;

“Official Controls Regulation” means Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017<sup>1</sup>;

“official detention” has the meaning assigned to it by Article 3(47) of the Official Controls Regulation;

“operator” means any natural or legal person subject to one or more of the obligations provided for in food legislation, including a food business operator;

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

“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 the Official Controls Regulation, EU Regulation 2019/1014, EU Regulation 2019/1793, the General Food Law Regulation or the IMSOC Regulation has, unless the context otherwise requires, the same meaning in these Regulations as it has in those Regulations.

<sup>10</sup> OJ No. L 31, 1.2.2002, p. 1.

<sup>11</sup> OJ No. L 245, 29.9.2003, p. 4.

<sup>12</sup> OJ No. L 100, 8.4.2006, p. 3.

<sup>13</sup> OJ No. L 60, 5.3.2008, p. 17.

<sup>14</sup> OJ No. L 189, 27.6.2014, p. 1.

<sup>15</sup> OJ No. L 117, 5.5.2017, p. 1.

(3) These Regulations shall not apply to food businesses engaged in activities which are subject to the European Union (Food and Feed Hygiene) Regulations 2020 (S.I. No. 22 of 2020), only to the extent that the food business engages in those activities.

*Food legislation*

3. These Regulations, the Official Controls Regulation, EU Regulation 2019/1013, EU Regulation 2019/1014, EU Regulation 2019/1602, EU Regulation 2019/1793, EU Regulation 2019/2130 and the IMSOC Regulation shall be deemed to be food legislation for the purposes of the Act of 1998.

PART 2

OFFICIAL CONTROLS ON IMPORTS OF FOOD OF NON-ANIMAL ORIGIN

*Responsibility for functions under Official Controls Regulation and related legislation*

4. (1) The competent authority, as regards compliance with food legislation, for the purposes of—

- (a) Chapter V of Title II of the Official Controls Regulation, EU Regulation 2019/1013, EU Regulation 2019/1014, EU Regulation 2019/1602, EU Regulation 2019/1793 and EU Regulation 2019/2130 is the Authority or the official agency, or both, as appropriate,
- (b) Chapter IV of Title VI of the Official Controls Regulation and the IMSOC Regulation, insofar as it relates to TRACES, is the official agency.

(2) The functions of the State, as regards compliance with food legislation, referred to in Article 74(1) of the Official Controls Regulation shall be performed by the Authority or the official agency, or both, as appropriate.

(3) For the purposes of enabling them to fulfil the obligations placed upon them by the Official Controls Regulation, EU Regulation 2019/1013, EU Regulation 2019/1014, EU Regulation 2019/1602, EU Regulation 2019/1793 and EU Regulation 2019/2130, the Authority and the official agency may exchange among themselves, or provide to any other bodies designated in the State as competent authorities for the purposes of the Official Controls Regulation, any information received by them in the execution and enforcement of those Regulations and other food legislation, including personal data within the meaning of Article 4 of Regulation (EU) 2016/679 of the

European Parliament and of the Council of 27 April 2016<sup>16</sup> and section 69 of the Data Protection Act 2018 (No. 7 of 2018).

(4) For the purposes of enabling them to fulfil the obligations placed upon them by the Official Controls Regulation and the IMSOC Regulation, the Authority, the official agency and the Revenue Commissioners shall co-operate closely, ensure reciprocal access to information and timely exchange of information in accordance with Article 75(1) of the Official Controls Regulation and reciprocally exchange relevant data, information and documents in accordance with Article 38(2) of the IMSOC Regulation.

(5) Paragraphs (3) and (4) are without prejudice to any other power of competent authorities to disclose information by or under European Union legislation.

*Fees or charges for food of non-animal origin subject to official controls at border control posts*

5. (1) The Authority or the official agency shall, pursuant to Article 79(2)(a) of the Official Controls Regulation, set and collect fees or charges to recover the costs they incur in relation to official controls performed at the border control post of first arrival into the European Economic Area on food referred to in Annex I to EU Regulation 2019/1793 and Annex II to EU Regulation 2019/1793.

(2) The operator responsible for the particular consignment of food of non-animal origin, or a representative thereof, shall pay the fees or charges imposed pursuant to paragraph (1).

*Supplementary provisions in relation to fees or charges*

6. (1) When setting the level of fees or charges under Regulation 5, the Authority or the official agency, as the case may be, shall—

- (a) take account of the costs referred to in Article 81 of the Official Controls Regulation,
- (b) comply with the calculation provisions in Article 82 of the Official Controls Regulation, and
- (c) comply with Article 83(1) of the Official Controls Regulation.

(2) A fee or charge payable pursuant to Regulation 5 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.

(3) Moneys received under Regulation 5 shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Public Expenditure and Reform.

(4) The Authority and the official agency may decide that fees or charges calculated in accordance with Article 82(1)(b) of the Official Controls Regulation shall not be collected below the amount at which, taking into

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<sup>16</sup> OJ No. L 119, 4.5.2016, p. 1.

account the cost of collection and the overall income expected from the fees and charges, the collection of that fee or charge would be uneconomical.

(5) The Authority and the official agency shall ensure a high level of transparency on the fees or charges set pursuant to Regulation 5(1) in accordance with Article 85(1) and (2) of the Official Controls 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 an operator, or a representative thereof, has failed to pay a fee or charge imposed pursuant to Regulation 5(1) in relation to said consignment and the Authority or official agency forms the view that the consignment has been abandoned.

*Official controls on imports of food of non-animal origin*

7. The Authority or the official agency, as the case may be, shall carry out official controls on food of non-animal origin entering into the State from a third country, in accordance with Chapter V of Title II of the Official Controls Regulation, EU Regulation 2019/1013, EU Regulation 2019/1014, EU Regulation 2019/1602, EU Regulation 2019/1793 and EU Regulation 2019/2130.

*Increased official controls on certain imports*

8. (1) Subject to paragraphs (2) to (5), in the case of a consignment of food of non-animal origin which is listed in Annex I to EU regulation 2019/ 1793 or Annex II to EU Regulation 2019/1793 and is entering the State from a third country—

- (a) the operator responsible for the consignment shall not import the consignment other than through a designated border control post in the State for the particular food of non-animal origin,
- (b) subject to subparagraph (c), the operator responsible for the consignment, or a representative thereof, shall, at least one working day before the expected arrival of the consignment, give the official agency at the designated border control post prior notification of the consignment by completing the relevant part of the Common Health Entry Document and submitting it into the information management system for official controls (IMSOC) for transmission to the official agency, in accordance with Articles 40 and 41 of the IMSOC Regulation and Article 56 of the Official Controls Regulation,
- (c) by way of derogation from subparagraph (b), where logistical constraints prevent compliance with the time limit set out in that subparagraph, the official agency may apply a period of prior notification of at least 4 hours before the expected arrival of the consignment, in accordance with Article 1(2) of EU Regulation 2019/1013,
- (d) the operator responsible for the consignment, or a representative thereof, shall present it for official controls at the designated

- border control post accompanied by the Common Health Entry Document for the consignment,
- (e) the operator responsible for the consignment shall ensure that the consignment is not split until all official controls have been performed and the Common Health Entry Document has been finalised by the official agency at the designated border control post in accordance with Articles 50(3), 56(5) and 57 of the Official Controls Regulation,
  - (f) the operator responsible for the consignment shall ensure that, in accordance with Article 3 of EU Regulation 2019/1602, an authenticated copy of the Common Health Entry Document, in paper or electronic form, accompanies each consignment irrespective of whether or not it is split at the border control post or subsequent to leaving the border control post but before it is released for free circulation in accordance with Article 57(2)(b) of the Official Controls Regulation,
  - (g) where the consignment is not split before being released for free circulation in accordance with Article 57(2)(b) of the Official Controls Regulation, the operator responsible for the consignment shall comply with the requirements of Article 4(a) and (b) of EU Regulation 2019/1602,
  - (h) where the consignment is to be split at the border control post, the operator responsible for the consignment shall comply with the requirements of Article 5(1)(a), (b), (d) and (e) of EU Regulation 2019/1602,
  - (i) where the consignment is to be split at the border control post but is non-compliant, and where the official agency at the border control post orders the operator responsible for the consignment to take one or more of the actions referred to in Article 66(3) of the Official Controls Regulation and Regulations 12 and 13 in respect of part of the consignment only, in accordance with Article 66(4) of the Official Controls Regulation, the operator shall comply with the requirements of Article 5(2) of EU Regulation 2019/1602,
  - (j) where the consignment is to be split after leaving the border control post and before being released for free circulation in accordance with Article 57(2)(b) of the Official Controls Regulation, the operator responsible for the consignment shall comply with the requirements of Article 6(a) and (b) of EU Regulation 2019/1602,
  - (k) the release for free circulation of the consignment shall be subject to the presentation by the operator, or a representative thereof, to the custom authorities of a duly finalised Common Health Entry Document as provided for in Article 57(2)(b) of the Official Controls Regulation, which confirms that the consignment is in compliance with the applicable food legislation,

- (l) for food of non-animal origin listed in Annex I to EU Regulation 2019/1793, the consignment shall be subject to a temporary increase of official controls at the designated border control post through which it enters the State in accordance with Article 5 of EU Regulation 2019/1793,
- (m) for food of non-animal origin listed in Annex II to EU Regulation 2019/1793—
  - (i) the consignment shall be subject to official controls at the designated border control post through which it enters the State in accordance with Article 7 of EU Regulation 2019/1793,
  - (ii) the operator shall ensure that—
    - (I) the consignment is identified with an identification code which corresponds to the identification code on the results of sampling and analysis,
    - (II) at the time of presentation for import into the State, the consignment is accompanied by an original official certificate which—
      - (A) is in accordance with the model set out in Annex IV to EU Regulation 2019/1793,
      - (B) is issued by the competent authority of the country of origin or the country where the consignment is consigned from if that country is different from the country of origin in accordance with Article 11(2)(a) and (c) of EU Regulation 2019/1793,
      - (C) is valid for not more than four months from the date of issue but no longer than six months from the date of the results of laboratory analysis referred to in Article 10(1) of EU Regulation 2019/1793, in accordance with Article 11(2)(d) of that Regulation,
      - (D) bears the identification code of the consignment, and
      - (E) in the case of an official certificate not submitted in the Information Management System for Official Controls referred to in Article 131 of the IMSOC Regulation, meets the requirements laid down in Article 3 of Commission Implementing Regulation (EU) 2019/628 of 8 April 2019<sup>17</sup> as if that provision applied to food of non-animal origin,

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<sup>17</sup> OJ No. L 131, 17.5.2019, p. 101.

- (III) subject to clause (iii), each individual bag or other form of packaging of the consignment is identified with that identification code;
  - (IV) at the time of presentation for import into the State, the results of sampling and analyses are presented in accordance with Article 10(1) of EU Regulation 2019/1793, and
  - (V) the analyses referred to in subclause (IV) are carried out in accordance with Article 10(5) of EU Regulation 2019/1793, and
- (iii) in the case of a consignment of food of non-animal origin listed in such Annex due to the risk of contamination by mycotoxins and where the packaging is combining several small packages, it is not necessary for the identification code of the consignment to be mentioned individually on all the separate small packages as long as it is mentioned at least on the package combining those small packages,
- (n) for food of non-animal origin listed in such Annexes due to the risk of presence of Salmonella, sampling and analyses for the control of Salmonella shall be performed in accordance with the sampling procedures and analytical reference methods laid down in Annex III to EU Regulation 2019/1793,
  - (o) for food of non-animal origin listed in such Annexes due to possible contamination risk by mycotoxins, including aflatoxins, sampling and analysis shall be performed in accordance with Commission Regulation (EC) No. 401/2006 of 23 February 2006<sup>18</sup> and Part 4 of the European Communities (Certain Contaminants in Foodstuffs) Regulations 2010 (S.I. No. 218 of 2010),
  - (p) the methods of sampling and analyses referred to in the footnotes to Annex I to EU Regulation 2019/1793 and Annex II to EU Regulation 2019/1793 shall be applied in relation to hazards other than those referred to in subparagraphs (n) to (p).
- (2) Paragraph (1) shall not apply to the following categories of consignments of food of non-animal origin unless their net weight exceeds 30 kg:
- (a) consignments sent as trade samples, laboratory samples or as display items for exhibitions, which are not intended to be placed on the market;
  - (b) consignments which form part of a passenger's personal luggage and are intended for personal consumption or use only;
  - (c) non-commercial consignments sent to natural persons which are not intended to be placed on the market; or

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<sup>18</sup> OJ No. L 70, 9.3.2006, p. 12.

(d) consignments intended for scientific purposes.

(3) In case of doubt on the intended use of a consignment of food of non-animal origin referred to in paragraph (2)(b) and (c), the burden of proof shall lie on the owner of the personal luggage and with the recipient of the consignment, respectively.

(4) Paragraph (1) shall not apply to food of non-animal origin imported from third countries and subjected to an increased level of official controls under EU Regulation 2019/1793 where the hazard is the presence of pesticides only.

(5) Paragraph (1) shall not apply to food of non-animal origin on board means of transport operating internationally which is not unloaded and is intended for consumption by the crew and passengers.

#### *Minimum requirements for border control posts*

9. The official agency shall ensure that the designated border control posts comply with the minimum requirements set down in Article 64 of the Official Controls Regulation and with Articles 3 and 4 of EU Regulation 2019/1014.

### PART 3

## PROHIBITION ON IMPORTATION OF CERTAIN FOOD OF NON-ANIMAL ORIGIN

#### *Prohibition on importation of certain food of non-animal origin*

10. A person shall not import a consignment of food of non-animal origin listed in Annex IIa to EU Regulation 2019/1793 into the State.

### PART 4

## ENFORCEMENT, OFFENCES AND PENALTIES

#### *Enforcement generally*

11. (1) The enforcement of food legislation in respect of food of non-animal origin entering the State from a third country shall be carried out in accordance with this Part and Chapter V of Title II of the Official Controls Regulation.

(2) Food legislation, in respect of food of non-animal origin referred to in paragraph (1), shall be enforced by the Authority or by the official agency acting pursuant to a service contract with the Authority, or by both, and, without prejudice to paragraph (1), the enforcement provisions contained in the Act of 1998 and the European Union (Official Controls in relation to Food

Legislation) Regulations 2020 (S.I. No. 79 of 2020) shall apply for the purposes of ensuring compliance with the requirements of food legislation in respect of such food of non-animal origin.

(3) The Authority or the official agency, as the case may be, may adopt any of the measures in this Part and Chapter V of Title II of the Official Controls Regulation, or any other measure it deems appropriate to deal with non-compliance with the requirements of food legislation.

(4) In deciding which enforcement measure to take, the Authority or the official agency, as the case may be, shall take account of the nature of the non-compliance and the operator's past record with regard to compliance.

(5) Where appropriate, the Authority shall notify the competent authority of the Member State of dispatch of its decision to impose enforcement measures.

(6) Where the Authority or the official agency, as the case may be, decides to take enforcement measures it shall provide the operator, or a representative thereof, with—

- (a) written notification of its decision, together with the reasons for the decision, and
- (b) information on the right of appeal under Regulation 18 or 19, as appropriate.

#### *Suspicion of non-compliance*

12. (1) The Authority or the official agency, as the case may be, may order the official detention of a consignment of food of non-animal origin where that is required to fulfil its obligations under Chapter V of Title II of the Official Controls Regulations and the place and length of such detention shall be determined by the Authority or the official agency.

(2) Where the Authority or the official agency have reasons to suspect fraudulent or deceptive practices by an operator responsible for a consignment of food of non-animal origin referred to in paragraph (1), or official controls give grounds to believe that food legislation has been seriously or repeatedly infringed, the Authority or the official agency shall, where appropriate, intensify official controls on consignments with the same origin or use.

#### *Measures to be taken in cases of non-compliance*

13. (1) The Authority or the official agency, as the case may be, shall order the official detention of any consignment of food of non-animal origin entering the State from a third country which does not comply with food legislation and shall refuse its entry into the State.

(2) Where the Authority or the official agency, as the case may be, orders the official detention of a consignment under paragraph (1) it shall, without delay, order the operator responsible for the consignment to take the appropriate measures referred to in Article 66(3) of the Official Controls Regulations.

(3) Where a consignment of food of non-animal origin entering the State from a third country contains food of non-animal origin listed in Annex I to EU Regulation 2019/1793 or Annex II to EU Regulation 2019/1793 and is not presented for official controls in accordance with the requirements laid down in Articles 50(1) and (3) and 56(1), (3) and (4) of the Official Controls Regulation, the IMSOC Regulation or EU Regulation 2019/1013, the Authority or the official agency, as the case may be, shall order that such consignment be retained or recalled and placed under official detention without delay.

*Measures to be taken on food of non-animal origin entering State from third countries presenting risk*

14. (1) Where the Authority, or the official agency, as the case may be, establishes that a consignment of food of non-animal origin entering the State from a third country presents a risk to human, animal or plant health, animal welfare, or, as regards GMOs and plant protection products, also to the environment, the Authority or the official agency, as the case may be, shall without delay, order the operator responsible for the consignment to destroy the consignment in accordance with Article 67(a) of the Official Controls Regulation or deal with the consignment in accordance with Articles 71(1) and (2) of the Official Controls Regulation.

(2) In the case of a consignment of food of non-animal origin to which Regulation 8(1) does not apply and for which a customs declaration for release for free circulation has been made in accordance with Article 5(12) and Articles 158 to 202 of Regulation (EU) No. 952/2013 of the European Parliament and of the Council of 9 October 2013<sup>19</sup>, where the Revenue Commissioners have reason to believe that the consignment may present a risk to human, animal or plant health, animal welfare or, as regards GMOs and plant protection products, also to the environment, the Revenue Commissioners shall—

- (a) suspend release for free circulation in accordance with Article 76(2) of the Official Controls Regulation,
- (b) immediately notify the official agency of such suspension,
- (c) comply with all requests of the official agency issued pursuant to Article 76(3) and (4) of the Official Controls Regulation, and
- (d) not permit any other customs procedures without the consent of the official agency,

and paragraph (1) and Regulations 13(1) and (2), 15 and 16 shall apply.

(3) In the case of consignments of food of non-animal origin to which Regulation 8(1) does not apply and for which no customs declaration for release for free circulation has been made, the Revenue Commissioners shall, in accordance with Article 76(5) of the Official Controls Regulation, where they have reason to believe that the consignment may present a risk to human,

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<sup>19</sup> OJ No. L 269, 10.10.2013, p. 1.

animal or plant health, animal welfare or, as regards GMOs and plant protection products, also to the environment, transmit all relevant information to the customs authorities in the Member States of final destination.

*Failure by operator to apply measures ordered*

15. Where an operator fails to carry out measures ordered by the Authority or the official agency pursuant to this Part and Chapter V of Title II of the Official Controls Regulation, within the applicable period referred to in Article 69(1) or (3) of the Official Controls Regulation, the Authority or the official agency, as the case may be, shall order the destruction of the consignment concerned in accordance with Article 69(2) of the Official Controls Regulation.

*Re-dispatch of consignments*

16. The Authority or the official agency, as the case may be, shall only allow the re-dispatch of consignments where the conditions laid down in Article 72(1) of the Official Controls Regulation are satisfied.

*Charges for enforcement measures*

17. (1) The Authority or the official agency, as the case may be, shall, pursuant to Article 138(4) of the Official Controls Regulation, charge the responsible operator for all expenditure incurred pursuant to enforcement measures undertaken pursuant to this Part and Chapter V of Title II of the Official Controls Regulation.

(2) An operator charged pursuant to paragraph (1) shall pay the charge imposed pursuant to that paragraph.

(3) A charge payable pursuant to this Regulation may be recovered by the Authority or the official agency from the operator 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 Public Expenditure and Reform.

(5) The Authority or the official agency, as the case may be, may order that any food of non-animal origin be destroyed, or otherwise disposed of, where an operator has failed to pay a charge imposed pursuant to this Regulation in relation to said food and the Authority or official agency forms the view that the food has been abandoned.

*Appeals to District Court*

18. (1) A person who is aggrieved by a decision taken by an authorised officer under Regulations 13(2) or 14(1) may appeal that decision to the District Court not later than 7 days after the decision is made by the authorised officer.

(2) The bringing of an appeal under paragraph (1) shall not have the effect of suspending the carrying out of the enforcement measures concerned, but the

appellant may apply to the Court to have the carrying out of the enforcement measures suspended until the appeal is disposed of and, on such application, the Court may, if it thinks proper to do so, direct that the carrying out of the enforcement measures be suspended until the appeal is disposed of.

(3) A person who appeals against a decision under this Regulation shall at the same time notify the Authority or official agency, as appropriate, of the appeal and the grounds for the appeal and the Authority or official agency and the appellant shall be entitled to appear, be heard and adduce evidence on the hearing of the appeal.

(4) The District Court shall, upon an appeal under this Regulation, do one of the following:

- (a) affirm the decision concerned;
- (b) direct the authorised officer to withdraw the decision concerned; or
- (c) direct the authorised officer to vary the decision concerned.

(5) An authorised officer shall comply with a direction under paragraph (4)(b) or (c).

#### *Internal appeals*

19. (1) A person who is aggrieved by a decision taken by an authorised officer under Regulations 12(1) or 13(3) may appeal that decision.

(2) The Authority and the official agency shall publish guidelines in relation to the procedure for appeals under paragraph (1) and shall inform any person who is the subject of a decision in relation to a matter referred to in paragraph (1) of his or her right to appeal and the applicable time limits.

#### *Offences*

20. (1) A person is guilty of an offence if he or she fails to comply with these Regulations or the Official Controls Regulation.

(2) Paragraph (1) shall not apply to an authorised officer, an approved examiner or an official laboratory or to a person acting under the express direction of such officer, examiner or laboratory, acting in the course of his or her duties pursuant to these Regulations.

(3) An operator responsible for a consignment of food of non-animal origin entering the State from a third country is guilty of an offence if he or she fails to make available to an authorised officer, on paper or in electronic form, and without delay, all information concerning the food of non-animal origin, in accordance with Article 15(3) of the Official Controls Regulation.

(4) A person is guilty of an offence if he or she—

- (a) fails to give access to an authorised officer in accordance with Article 15(1) of the Official Controls Regulation,

- (b) fails to assist or cooperate with an authorised officer in accordance with Article 15(2) of the Official Controls Regulation,
- (c) fails to pay a fee or charge in accordance with Regulation 5(2) or 17(2),
- (d) imports a consignment into the State other than through a designated border control post for the particular food of non-animal origin, contrary to Regulation 8(1)(a) and Article 47(5) of the Official Controls Regulation,
- (e) fails to notify the official agency at the designated border control post of the physical arrival of the consignment in accordance with Regulation 8(1)(b) and Article 40 and 41 of the IMSOC Regulation and Article 56 of the Official Controls Regulation,
- (f) presents a consignment for official control at a designated border control post but fails to ensure it is accompanied by a Common Health Entry Document contrary to Regulation 8(1)(d) and Article 56 of the Official Controls Regulation,
- (g) fails to ensure that a consignment is not split until all official controls have been performed and the Common Health Entry Document has been finalised by the official agency in accordance with Regulation 8(1)(e) and Articles 50(3), 56(5) and 57 of the Official Controls Regulation,
- (h) fails to ensure that an authenticated copy of the Common Health Entry Document, in paper or electronic form, accompanies each consignment irrespective of whether or not it is split at the border control post or subsequent to leaving the border control post but before it is released for free circulation, in accordance with Regulation 8(1)(f) and Article 57(2)(b) of the Official Controls Regulation,
- (i) fails to comply with Regulation 8(1)(g) and Article 4(a) and (b) of EU Regulation 2019/1602 where the consignment is not split before being released for free circulation,
- (j) fails to comply with the requirements of Regulation 8(1)(h) and Article 5(1)(a), (b), (d) and (e) of EU Regulation 2019/1602 where the consignment is split at the border control post,
- (k) fails to comply with an action ordered by the official agency under Regulation 8(1)(i) and Article 5(2) of EU Regulation 2019/1602 where the consignment is to be split at the border control post but is non-compliant,
- (l) fails to comply with the requirements under Regulation 8(1)(j) and Article 6(a) and (b) of EU Regulation 2019/1602 where the consignment is to be split after leaving the border control post and before being released for free circulation,

- (m) imports a consignment of food of non-animal origin listed in Annex II to EU Regulation 2019/1793 but fails to ensure that—
    - (i) the consignment is identified with an identification code in accordance with Regulation 8(1)(m)(ii)(I) and Article 9(1) of EU Regulation 2019/1793,
    - (ii) the consignment is accompanied by an official certificate which is in accordance with Regulation 8(1)(m)(ii)(II) and Article 11 of EU Regulation 2019/1793,
    - (iii) the individual bag or other form of packaging of the consignment is identified in accordance with Regulation 8(1)(m)(ii)(III) and Article 9(2) of EU Regulation 2019/1793,
    - (iv) the results of sampling and analysis are presented in accordance with Regulation 8(1)(m)(ii)(IV) and Article 10(1) of EU Regulation 2019/1793,
    - (v) the analyses on the consignment are performed in accordance with Regulation 8(1)(m)(ii)(V) and Article 10(5) of EU Regulation 2019/1793,
  - (n) imports a consignment of food of non-animal origin listed in Annex IIa to EU Regulation 2019/1793 contrary to Regulation 10 and Article 11a of EU Regulation 2019/1793,
  - (o) fails to carry out a measure ordered by the Authority or the official agency pursuant to Regulations 13, 14, 15 and Article 66 or 67 of the Official Controls Regulation,
  - (p) obstructs or interferes with or impedes an authorised officer in the exercise of the officer's powers under these Regulations,
  - (q) fails or refuses to state his or her name or address in compliance with a request under these Regulations,
  - (r) fails to comply with a request or notice from an authorised officer under these Regulations,
  - (s) in purported compliance with a request or requirement under these Regulations, makes a statement or provides information to an authorised officer which the person knows is false or misleading in any material respect,
  - (t) provides records or documents, or copies thereof, which the person knows to be false or misleading in content,
  - (u) gives, in purported compliance with a request under these Regulations, a name, an address or corroborative evidence which is false or misleading, or
  - (v) aids or abets a contravention of these Regulations.
- (5) In a prosecution for an offence under this Regulation the onus of proving that a fee or charge pursuant to Regulation 5(2) or 17(2) has been paid lies on the defendant.

(6) A person who forges, or utters knowing it to be forged, a certificate of analysis or other document purporting to be issued, granted or given under these Regulations, or food legislation or required for the purposes of these Regulations, or food legislation (hereafter referred to as “a forged document”), is guilty of an offence.

(7) A person who alters with intent to defraud or deceive, or utters knowing it to be so altered, a certificate of analysis or other document issued, granted or given under these Regulations or food legislation or required for the purposes of these Regulations or food legislation (hereafter referred to as “an altered document”), is guilty of an offence.

(8) A person who, without lawful authority, has in his or her possession a forged document or an altered document, knowing it to be a false or altered document as the case may be, is guilty of an offence.

(9) A person who falsely represents himself or herself to be an authorised officer, is guilty of an offence.

(10) For the purposes of these Regulations every contravention of a Regulation shall be deemed a separate contravention and every contravention of a paragraph or a subparagraph shall also be deemed to be a separate contravention and shall carry the same penalty as for a single contravention of any Regulation.

#### *Bodies corporate*

21. 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.

#### *Prosecution of offences*

22. (1) 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.

(2) 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 the 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 the official agency.

(3) An order for costs and expenses under paragraph (2) is in addition to, and not instead of, any fine or penalty the court may impose under paragraph (1).

(4) Notwithstanding section 57 of the Act of 1998, an offence under these Regulations may be prosecuted summarily by the Authority, or the official agency.

## PART 5

### REVOCATIONS AND TRANSITIONAL PROVISIONS

*Revocations*

23. (1) The following are revoked:
- (a) the European Communities (Official Controls on the Import of Food of Non-Animal Origin) Regulations 2010 (S.I. No. 391 of 2010);
  - (b) the European Communities (Official Controls on the Import of Food of Non-Animal Origin) (Amendment) (No. 2) Regulations 2013 (S.I. No. 178 of 2013);
  - (c) the European Union (Special Conditions Governing the Import of Certain Food from Certain Third Countries Due to Contamination Risk by Aflatoxins) Regulations 2015 (S.I. No. 250 of 2015);
  - (d) the European Union (Special Conditions Applicable to the Import of Guar Gum Originating in or Consigned from India due to Contamination Risks by Pentachlorophenol and Dioxins) Regulations 2015 (S.I. No. 459 of 2015);
  - (e) the European Union (Special Conditions Governing the Import of Certain Food from Certain Third Countries due to Contamination Risk by Aflatoxins) (Amendment) Regulations 2016 (S.I. No. 449 of 2016);
  - (f) the European Union (Temporary Suspension of Imports from Bangladesh of Foodstuffs Containing or Consisting of Betel Leaves) Regulations 2016 (S.I. No. 553 of 2016);
  - (g) the European Union (Special Conditions Governing the Import of Certain Food from Certain Third Countries Due to Contamination Risk by Aflatoxins) (Amendment) Regulations 2017 (S.I. No. 251 of 2017);
  - (h) the European Union (Specific Conditions Applicable to the Introduction into the Union of Consignments from Certain Third Countries due to Microbiological Contamination) Regulations 2017 (S.I. No. 325 of 2017);
  - (i) the European Communities (Official Controls on the Import of Food of Non-Animal Origin) (Amendment) (No. 2) Regulations 2018 (S.I. No. 327 of 2018);
  - (j) the European Union (Temporary Suspension of Imports from Bangladesh of Foodstuffs Containing or Consisting of Betel Leaves) (Amendment) Regulations 2018 (S.I. No. 328 of 2018);

- (k) the European Communities (Official Controls on the Import of Food of Non-Animal Origin) (Amendment) Regulations 2019 (S.I. No. 18 of 2019);
  - (l) the European Union (Special Conditions Governing the Import of Certain Food from Certain Third Countries Due to Contamination Risk by Aflatoxins) (Amendment) Regulations 2019 (S.I. No. 335 of 2019);
  - (m) the European Communities (Official Controls on the Import of Food of Non-Animal Origin) (Amendment) (No. 2) Regulations 2019 (S.I. No. 336 of 2019); and
  - (n) the European Communities (Official Controls on the Import of Food of Non-Animal Origin) (Amendment) (No. 3) Regulations 2019 (S.I. No. 414 of 2019).
- (2) References in other enactments to Regulations revoked under paragraph (1) shall, where the context so admits, be construed as references to these Regulations.

*Transitional provisions*

24. (1) Notwithstanding the provisions of Regulation 20(4), an operator is not guilty of an offence where he or she imports into the State from a third country a consignment of Sesamum seeds from Sudan or Uganda without complying with the requirement in Regulation 8(1)(m)(ii)(II) or (IV), if the consignment left the country of origin, or the country of dispatch if that country is different from the country of origin, before 27 May 2020.

(2) Notwithstanding the provisions of Regulation 20(4), an operator is not guilty of an offence in relation to the importation into the State from a third country of a consignment of Sesamum seeds from India where—

- (a) he or she would not have been guilty of such offence but for the amendment of point 1 of Annex II to EU Regulation 2019/1793 by Article 2 of Commission Implementing Regulation (EU) 2020/1540 of 22 October 2020<sup>9</sup>, and
- (b) the consignment left the country of origin, or the country of dispatch if that country is different from the country of origin, before 26 October 2020.

GIVEN under my Official Seal,  
3 December, 2020.



STEPHEN DONNELLY,  
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 further effect to Regulation (EU) 2017/625 of the European Parliament and of the Council of 15 March 2017, Commission Implementing Regulation (EU) 2019/1013 of 16 April 2019, Commission Implementing Regulation (EU) 2019/1014 of 12 June 2019, Commission Delegated Regulation (EU) 2019/1602 of 23 April 2019, Commission Implementing Regulation (EU) 2019/1715 of 30 September 2019, Commission Implementing Regulation (EU) 2019/1793 of 22 October 2019, Commission Implementing Regulation (EU) 2019/2130 of 25 November 2019, Commission Implementing Regulation (EU) 2020/625 of 6 May 2020 and Commission Implementing Regulation (EU) 2020/1540 of 22 October 2020.

These Regulations may be cited as the European Union (Official Controls in relation to Food Legislation) (Imports of Food of Non-Animal Origin) Regulations 2020 and they come into effect on the date they were signed.

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