



STATUTORY INSTRUMENTS.

S.I. No. 198 of 2021

EUROPEAN UNION (UNFAIR TRADING PRACTICES IN THE
AGRICULTURAL AND FOOD SUPPLY CHAIN) REGULATIONS 2021

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ARRANGEMENT OF REGULATIONS

Part 1

PRELIMINARY AND GENERAL

- 1. Citation**
- 2. Interpretation**
- 3. Scope of Regulation**
- 4. Application of Regulations**
- 5. Enforcement Authority**

Part 2

Prohibited Unfair Practices

- 6. Prohibited Practices, Unconditional**
- 7. Prohibited Practices, Conditional**

Part 3

Complaints, etc

- 8. Complaints and confidentiality**
- 9. Reporting**

Part 4

Enforcement

- 10. Appointment of authorised officer**
- 11. Functions of authorised officer**
- 12. Search warrant**
- 13. Compliance notice**
- 14. Appeal against compliance notice**

15. Obstruction and false statements

Part 5
Procedural

16. Data Sharing

17. Service

Part 6
Penalties

18. Penalties and prosecutions

EUROPEAN UNION (UNFAIR TRADING PRACTICES IN THE
AGRICULTURAL AND FOOD SUPPLY CHAIN) REGULATIONS 2021

I, CHARLIE MCCONALOGUE, 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) 2019/633 of the European Parliament and of the Council of 17 April 2019¹, hereby make the following regulations:

Part 1
PRELIMINARY AND GENERAL

Citation

1. (1) These Regulations may be cited as the European Union (Unfair Trading Practices in the agricultural and food supply chain) Regulations 2021.
- (2) These Regulations come into operation on 1 July 2021.

Interpretation

2. For the purposes of these Regulations the following definitions apply:
 - “agricultural and food products” means products listed in Annex I to the Treaty on the Functioning of the European Union as well as products not listed in that Annex, but processed for use as food using products listed in that Annex;
 - “annual turnover” has the meaning assigned to it by the second subparagraph of Article 1(2) of the UTP Directive;
 - “authorised officer” means a person appointed under Regulation 10;
 - “buyer” means any natural or legal person, irrespective of that person’s place of establishment, or any public authority in the Union, who buys agricultural and food products, (the term “buyer” may include a group of such natural and legal persons);
 - “Directive 2011/7” means Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011²;
 - “document” includes any information, photograph, image or map whether maintained in an electronic form or otherwise;
 - “enforcement authority” means, in the case of the State, the Minister and, in the case of any other Member State, the enforcement authority of that Member State for the purposes of the UTP Directive;

¹ OJ L 111, 25.4.2019, p. 59

² OJ L 48, 23.2.2011, p. 1

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

“perishable agricultural and food products” means agricultural and food products that by their nature or at their stage of processing are liable to become unfit for sale within 30 days after harvest, production or processing;

“public authority” means—

- (a) government or other public administration, including public advisory bodies, at national, regional or local level,
- (b) any natural or legal person performing public administrative functions under national law, including specific duties, activities or services, and
- (c) any natural or legal person having public responsibilities or functions, or providing public services, under the control of a body or person falling within paragraph (a) or (b),

and includes—

- (i) a Minister of the Government,
- (ii) the Commissioners of Public Works in Ireland,
- (iii) a local authority for the purposes of the Local Government Act 2001 (No. 37 of 2001),
- (iv) a harbour authority within the meaning of the Harbours Act 1946 (No. 9 of 1946),
- (v) the Health Service Executive established under the Health Act 2004 (No. 42 of 2004),
- (vi) a board or other body (but not including a company under the Companies Act 2014) established by or under statute,
- (vii) a company under the Companies Act 2014, in which all the shares are held—
 - (I) by or on behalf of a Minister of the Government,
 - (II) by directors appointed by a Minister of the Government,
 - (III) by a board or other body within the meaning of paragraph (vi), or
 - (IV) by a company to which subparagraph (I) or (II) applies, having public administrative functions and responsibilities,

but does not include any body when acting in a judicial or legislative capacity;

“Regulation (EU) No 1308/2013” means Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013³;

“supplier” means any agricultural producer or any natural or legal person, irrespective of their place of establishment, who sells agricultural and food products, (the term “supplier” may include a group of such agricultural

³ OJ L 347, 20.12.2013, p. 671

producers or a group of such natural and legal persons, such as producer organisations, organisations of suppliers and associations of such organisations;

“supply agreement” means a contract (whether orally or in writing) for the sale or supply of agricultural and food products by a supplier to a buyer;

“UTP Directive” means Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019.

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

Scope of Regulations

3. (1) These Regulations shall be without prejudice to the provisions of any Act or instrument made under such Act aimed at combating unfair trading practices that are not within the scope of these Regulations, provided that those provisions are compatible with the rules on the functioning of the internal market.

(2) Where a prohibition specified in Regulations 6 or 7 conflicts with a provision in another Act or instrument made under such Act, or an act of an institution of the European Union, which falls within the scope of the prohibition, the provision of Regulation 6 or 7 relating to that prohibition shall, in accordance with Article 3(4) of the UTP Directive, prevail over such other provision.

Application of Regulations

4. (1) These Regulations apply to certain unfair trading practices which occur in relation to sales of agricultural and food products by-

- (a) suppliers which have an annual turnover not exceeding €2,000,000 to buyers which have an annual turnover of more than €2,000,000,
- (b) suppliers which have an annual turnover of more than €2,000,000 and not exceeding €10,000,000 to buyers which have an annual turnover of more than €10,000,000,
- (c) suppliers which have an annual turnover of more than €10,000,000 and not exceeding €50,000,000 to buyers which have an annual turnover of more than €50,000,000,
- (d) suppliers which have an annual turnover of more than €50,000,000 and not exceeding €150,000,000 to buyers which have an annual turnover of more than €150,000,000, and
- (e) suppliers which have an annual turnover of more than €150,000,000 and not exceeding €350,000,000 to buyers which have an annual turnover of more than €350,000,000, or
- (f) suppliers which have an annual turnover not exceeding €350,000,000 to all buyers which are public authorities.

- (2) These Regulations apply to-
 - (a) sales where either the supplier or the buyer, or both, are established in the Union, and
 - (b) services, insofar as explicitly referred to in Regulations 6 or 7, provided by the buyer to the supplier.
- (3) These Regulations apply -
 - (a) to a supply agreement concluded after the making of these Regulations, or
 - (b) to a supply agreement concluded before the making of these Regulations, from 12 months after such making of the Regulations.
- (4) These Regulations do not apply to agreements between suppliers and consumers.

Enforcement Authority

- 5. (1) The Minister is designated as the enforcement authority for the purposes of the UTP Directive and these Regulations.
- (2) The enforcement authority may initiate and conduct investigations on its own initiative or on the basis of a complaint.

Part 2

Prohibited Unfair Practices

Prohibited Practices, Unconditional

- 6. (1) A buyer shall not pay a supplier-
 - (a) where a supply agreement provides for the delivery of products on a regular basis-
 - (i) for perishable agricultural and food products, later than 30 days after the end of an agreed delivery period in which deliveries have been made or later than 30 days after the date on which the amount payable for that delivery period is set, whichever of those two dates is the later, or
 - (ii) for other agricultural and food products, later than 60 days after the end of an agreed delivery period in which deliveries have been made or later than 60 days after the date on which the amount payable for that delivery period is set, whichever of those two dates is the later, or
 - (b) where the supply agreement does not provide for the delivery of products on a regular basis-
 - (i) for perishable agricultural and food products, later than 30 days after the date of delivery or later than 30 days after the

date on which the amount payable is set, whichever of those two dates is the later, or

- (ii) for other agricultural and food products, later than 60 days after the date of delivery or later than 60 days after the date on which the amount payable is set, whichever of those two dates is the later.

(2) For the purposes of the payment period in paragraph (1)(a), the agreed delivery period shall be not more than one month.

(3) Notwithstanding paragraphs (1)(a) and (b), where the buyer sets the amount payable-

- (a) the payment period referred to in paragraph (1)(a) shall start to run from the end of an agreed delivery period in which the deliveries have been made, and
- (b) the payment period referred to in paragraph (1)(b) shall start to run from the date of delivery.

(4) Paragraph (1)(a) is without prejudice-

- (a) (i) to the consequences of late payments and remedies as laid down in Directive 2011/7/EU (and the European Communities (Late Payment in Commercial Transactions) Regulations 2012 (S.I. No. 580 of 2012)), and
 - (ii) by way of derogation from the payment periods set out in Directive 2011/7/EU (and S.I. No. 580 of 2012), the consequences of late payments and remedies referred to in clause (i) shall apply, where applicable, on the basis of the payment periods set out in the UTP Directive and these Regulations, and
- (b) to the option of a buyer and a supplier to agree on a value sharing clause within the meaning of Article 172a of Regulation (EU) No 1308/2013.

(5) Paragraph (1)(a) shall not apply to a payment-

- (a) made by a buyer to a supplier where such payment is made in the framework of the school scheme pursuant to Article 23 of Regulation (EU) No 1308/2013,
- (b) made by a public entity providing healthcare in the meaning of point (b) of Article 4(4) of Directive 2011/7/EU,
- (c) under a supply agreement between a supplier of grapes or must for wine production and their direct buyer, provided-
 - (i) that the specific terms of payment for the sales transactions are included in standard contracts which have been made binding by the Member State pursuant to Article 164 of Regulation (EU) No 1308/2013 before 1 January 2019, and that this extension of the standard contract is renewed by the Member State from that date without any significant

changes to the terms of payment to the disadvantage of suppliers of grapes or must, and

- (ii) that the supply agreement between the supplier of grapes or must for wine production and their direct buyer is multiannual or becomes multiannual.

(6) A buyer shall not cancel orders of perishable agricultural and food products at such short notice that a supplier cannot reasonably be expected to find an alternative means of commercialising or using those products.

(7) A buyer shall not unilaterally change the terms of a supply agreement for the agricultural and food products that concern the frequency, method, place, timing or volume of the supply or delivery of the agricultural and food products, the quality standard, the terms of payment or the price, or as regards the provision of services insofar as these are explicitly referred to in Regulation 7.

(8) A buyer shall not require payment from a supplier that is not related to the sale of the agricultural and food products of the supplier.

(9) A buyer shall not require a supplier to pay for the deterioration or loss, or both, of agricultural and food products that occurs on the buyer's premises or after ownership has been transferred to the buyer, where such deterioration or loss is not caused by the negligence or fault of the supplier.

(10) A buyer shall not refuse to confirm in writing the terms of a supply agreement between the buyer and the supplier for which the supplier has asked for written confirmation. This shall not apply where the supply agreement concerns products to be delivered by a member of a producer organisation, including a cooperative, to the producer organisation of which the supplier is a member, if the statutes of that producer organisation or the rules and decisions provided for in, or derived from, those statutes contain provisions having similar effects to the terms of the supply agreement.

(11) A buyer shall not unlawfully acquire, use or disclose trade secrets of a supplier within the meaning of Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016⁴.

(12) A buyer shall not threaten to carry out, or carry out, acts of commercial retaliation against the supplier if the supplier exercises its contractual or legal rights, including by filing a complaint with enforcement authorities or by cooperating with enforcement authorities during an investigation.

(13) A buyer shall not require compensation from the supplier for the cost of examining customer complaints relating to the sale of the supplier's products, in the absence of negligence or fault on the part of the supplier.

(14) Subject to paragraph (15), for the purposes of paragraph (6), notice of less than 30 days shall always be considered as short notice.

(15) For the purposes of paragraph (6), the Minister may set periods shorter than 30 days for specific sectors in duly justified cases having regard to the purpose of the UTP Directive.

⁴ OJ L 157, 15.6.2016, p. 1

(16) Where the Minister sets a period shorter than 30 days under paragraph (15) for a specific sector-

- (a) details of that shorter period shall be published on a website maintained by, or on behalf of, the Minister, and
- (b) notice of the shorter period shall be published in Iris Oifigiúil.

(17) A person who contravenes paragraphs (1), (6), (7), (8), (9), (10), (11), (12) or (13) commits an offence.

Prohibited Practices, Conditional

7. (1) A buyer shall not, unless they have been previously agreed in clear and unambiguous terms in a supply agreement or in a subsequent agreement between the supplier and the buyer-

- (a) return unsold agricultural and food products to the supplier without paying for those unsold products or without paying for the disposal of those products, or both,
- (b) charge a supplier payment as a condition for stocking, displaying or listing its agricultural and food products, or of making such products available on the market,
- (c) require a supplier to bear all or part of the cost of any discounts on agricultural and food products that are sold by the buyer as part of a promotion,
- (d) require the supplier to pay for the advertising by the buyer of agricultural and food products,
- (e) require the supplier to pay for the marketing by the buyer of agricultural and food products, or
- (f) charge the supplier for staff for fitting-out premises used for the sale of the supplier's products.

(2) Where a buyer engages in the trading practice referred to in paragraph (1)(c), the buyer shall, prior to a promotion that is initiated by the buyer, specify the period of the promotion and the expected quantity of the agricultural and food products to be ordered at the discounted price.

(3) Where a buyer requires payment for the situations referred to in paragraph (1)(b), (c), (d), (e) or (f), if requested by the supplier, the buyer shall provide the supplier with an estimate in writing of the payments per unit or the overall payments, whichever is appropriate, and, insofar as the situations referred to in paragraph (1)(b), (d), (e) or (f) are concerned, shall also provide, in writing, an estimate of the cost to the supplier and the basis for that estimate.

(4) A person who contravenes this Regulation commits an offence.

Part 3
Complaints, etc

Complaints and confidentiality

8. (1) Suppliers may address complaints to the Minister -
 - (a) where the supplier is established in the State, or
 - (b) where the buyer that is suspected to have engaged in a prohibited trading practice is established in the State.
- (2) (a) Producer organisations, other organisations of suppliers and associations of such organisations, may submit a complaint at the request of one or more of their members or, where appropriate, at the request of one or more members of their member organisations, where those members consider that they have been affected by a prohibited trading practice, and
 - (b) other organisations that have a legitimate interest in representing suppliers shall have the right to submit complaints, at the request of a supplier, and in the interest of that supplier, provided that such organisations are independent non-profit-making legal persons.
- (3) (a) Where the complainant so requests, the Minister shall take the necessary measures for the appropriate protection of the identity of the complainant or the members or suppliers referred to in paragraph (2) and for the appropriate protection of any other information in respect of which the complainant considers that the disclosure of such information would be harmful to the interests of the complainant or of those members or suppliers, and
 - (b) the complainant shall identify any information for which it requests confidentiality.
- (4) Where the Minister receives a complaint, he or she shall inform the complainant within a reasonable period of time after the receipt of the complaint of how it intends to follow up on the complaint.
- (5) Where the Minister considers that there are insufficient grounds for acting on a complaint, he or she shall inform the complainant of the reasons within a reasonable period of time after the receipt of the complaint.
- (6) Where the Minister considers that there are sufficient grounds for acting on a complaint, he or she shall initiate, conduct and conclude an investigation of the complaint within a reasonable period of time.

Reporting

9. (1) The Minister shall—

- (a) publish an annual report detailing the number of complaints received and the number of investigations opened or closed during the previous year, and
- (b) for each closed investigation the report shall summarise a description of the complaint, the outcome of the investigation and where applicable, the decision taken, subject to the confidentiality provisions of Regulation 8.

(2) The Minister may, in accordance with Article 6 of the UTP Directive (and in particular, paragraph (1)(f) thereof), publish details of his or her decisions relating to—

- (a) infringements of the prohibitions referred to in Regulations 6 or 7, or where the buyer was required to bring such prohibited trading practices to an end, or
- (b) the imposition, or initiation of proceedings for the imposition of fines and other penalties, and interim measures.

Part 4

Enforcement

Appointment of authorised officer

10. (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.

(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 pursuant to paragraph (2),
- (b) if it is for a fixed period, on the expiry 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 or member of a class of person, upon the person ceasing to be such an officer or member.

(4) Nothing in paragraph (3) is to be construed so as to prevent the Minister from reappointing as an authorised officer a person to whom that paragraph relates.

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

Functions of authorised officer

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

- (a) enter and inspect, at all reasonable times, any premises if he or she is carrying out an official control or other official activity for the purposes of these Regulations or the UTP Directive or where he or she has reasonable grounds for believing that—
 - (i) a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates is, may be or has been present, or
 - (ii) equipment, machinery, a vehicle, a vessel or other thing used in connection with a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates is, may be or has been present,
- (b) examine a document or record related to agricultural and food products, equipment, machinery or other thing used in connection with agricultural and food products or other thing to which these Regulations or the UTP Directive relates,
- (c) require the name and address of the owner, or person in possession or control of a document or record related to agricultural and food products, equipment, machinery, a vehicle or a vessel used in connection with agricultural and food products or other thing to which these Regulations or the UTP Directive relates, or require details of place of departure, journey or destination,
- (d) inspect a vehicle, a vessel, an aircraft, a railway wagon, a container, equipment, machinery, a computerised information management system or other thing used in connection with a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates 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 computerised information management system, a vehicle, a vessel or other thing used in connection with a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates, 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 extracts from the record that the officer finds or is produced to him or her during an inspection, or
- (g) make a record, including by means of writing, sound recording, photograph, video or other means.

(2) An authorised officer may require a person to give information regarding the ownership and identity of a document or record related to agricultural and food products, equipment, machinery, a vehicle, a vessel or other thing used in connection with a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates as is in the person's knowledge or procurement.

(3) Where an authorised officer has reasonable grounds for believing that—

- (a) an offence is being or has been committed under these Regulations, or
- (b) evidence of an offence to which subparagraph (a) relates may be, is or has been on any land or premises, or in a vehicle, a vessel, an aircraft, a railway wagon, a container, equipment or machinery,

the officer may, in addition to the powers exercisable by him or her under paragraph (1):

- (i) search the land or premises;
- (ii) search the vehicle, vessel, aircraft, railway wagon, container, equipment or machinery (including any computerised information management system);
- (iii) require a person in charge or control of the vehicle, vessel, aircraft, railway wagon, container, equipment or machinery to—
 - (I) refrain from moving it, or move it to a location where it may be searched,
 - (II) give information regarding its place of departure, journey or destination, and
 - (III) where the equipment or machinery is part of a computerised information management system, provide assistance (including passwords) to enable access to such devices or systems;
- (iv) seize and detain a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates and mark or otherwise identify it;
- (v) detain a vehicle, vessel, aircraft, railway wagon, equipment, machinery (including any computerised information

management system) or container for such reasonable period necessary for the purposes of permitting an inspection or a search under this Regulation either at the place where it was first detained or require it to be moved to such other location as the authorised officer requires;

- (vi) remove any equipment, machinery (including any computerised information management system), books, documents or records and detain them for such reasonable period necessary for the purpose of his or her functions under these Regulations;
- (vii) give such direction to a person who has a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates, or who has equipment, machinery, vehicle or vessel or other thing used in connection with a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates 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 12 other than where he or she has reasonable grounds for believing that before a search warrant could be sought in relation to the dwelling under Regulation 12, any evidence of an offence referred to in paragraph (3)(a) is being or is likely to be disposed of or destroyed.

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

(9) A member of the Garda Síochána may stop a vehicle or vessel, for the purposes of these Regulations and may require it to be moved for inspection to such place as he or she directs.

(10) A person who has—

- (a) a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates, or
- (b) equipment, machinery, a vehicle, a vessel or other thing used in connection with a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates

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.

(11) The owner or person in charge of any premises used in connection with a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates 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.

(12) 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 agricultural and food products or other thing to which these Regulations or the UTP Directive relates,
- (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.

(13) 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.

Search warrant

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

- (a) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found on a premises,
- (b) there is or was a document or record related to agricultural and food products, equipment or other thing made, used or adapted for use (including manufacture and transport) in connection with

a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates, or

- (c) a document or other record related to a thing to which subparagraph (a) or (b) refers is or may be on the premises,

the judge may issue a search warrant.

(2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers or other persons as the named authorised officer thinks necessary, at any time, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by use of reasonable force) the premises, vehicle, vessel or aircraft named in the warrant.

(3) If a premises is entered under a warrant issued under this Regulation, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

Compliance notice

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

- (a) these Regulations or the UTP Directive is not being or has not been complied with, or there are reasons to believe that these Regulations or the UTP Directive will not be complied with, or
- (b) it is necessary, ancillary or supplementary for the UTP Directive to have full effect,

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,
- (ii) in possession or control of a document or record related to agricultural and food products 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 14, 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 18(1).

(3) A compliance notice may require that—

- (a) a buyer bring a prohibited trading practice referred to in Regulations 6 or 7 to an end,

- (b) a buyer pay for perishable agricultural and food products where the order was cancelled at short notice,
- (c) a buyer return to a supplier a payment, charge, compensation or however such expense is described and referred to in Regulations 6 or 7,
- (d) a document or record related to agricultural and food products or other thing to which these Regulations or the UTP Directive relates be dealt with in a manner specified in the notice,
- (e) agricultural and food products or other thing to which these Regulations or the UTP Directive relates be detained in such manner and at a place (if any) as the officer specifies in the notice,
- (f) a specified operation or activity cease on a premises, or
- (g) a specified operation or activity may only be carried out under and in accordance with such terms and conditions as are specified in the notice.

(4) A person to whom a compliance notice is served shall comply with the compliance notice until the notice expires, is withdrawn under paragraph (6) or is annulled under Regulation 14, 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, a document or record related to agricultural and food products, vehicle, vessel, machinery (including any computerised information management system), equipment or other thing to which the UTP Directive relates 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 14.

(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

14. (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 the agricultural and food products, premises, vehicle, machinery (including any computerised information management system), equipment, vessel or other thing to which the UTP Directive relates 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 these Regulations or the UTP Directive.

(2) Notice of an appeal shall contain a statement of 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 13 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, who —

- (a) pending the determination of an appeal, deals with agricultural and food products, premises, vehicle, vessel, machinery (including any computerised information management system), equipment, document 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, deals with agricultural and food products, any premises, vehicle, vessel, equipment, machinery (including any computerised information management system), document or other thing to which the notice relates other than in accordance with the terms of the compliance notice as confirmed or modified

commits an offence.

(6) In this Regulation “appeal” means an appeal under paragraph (1).

Obstruction and false statements

15. (1) 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 11,
- (c) fails, without reasonable cause, to give assistance or requested information to an authorised officer in accordance with Regulation 11,

- (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,
- (e) tampers or otherwise interferes with a sample taken under Regulation 11, or
- (f) aids or abets a contravention of these Regulations or the UTP Directive,

commits an offence.

(2) A statement or admission made by a person pursuant to a requirement under Regulation 11(10)(ii) is not admissible in evidence in proceedings brought against the person for an offence (other than an offence under this Regulation for failing to give information or giving false information) under these Regulations.

Part 5

Procedural

Data Sharing

16. (1) Information, 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 2016⁵ and section 69 of the Data Protection Act 2018) held by—

- (a) the Minister,
- (b) an enforcement authority of another Member State, or
- (c) a body or individual to whom a function under these Regulations or the UTP Directive has been delegated,

for the purposes of these Regulations or an act of the institutions of the European Union, may be exchanged by them with each other for the performance by them of their functions under these Regulations.

(2) Paragraph (1) is without prejudice to any other power of the Minister to disclose information by or under an act of the institutions of the European Union.

Service

17. (1) A compliance notice shall, subject to paragraph (2), be addressed to the person concerned by name and may be served on or given to the person—

- (a) by giving it to the person, his or her employee, servant or agent,

⁵ OJ L 119, 4.5.2016, p.1

- (b) by leaving it at the address at which the person ordinarily resides, normally carries out business, or, if an address for service has been furnished, at that address,
 - (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, if an address for service has been furnished, at that address,
 - (d) if the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the compliance notice relates to a premises, by delivering it to the premises or by affixing it in a conspicuous position on or near the premises,
 - (e) by sending it by means of electronic mail to a device or facility for the reception of electronic mail where such an electronic mail address has been furnished by the person, but only if the sender's facility for the reception of electronic mail generates a message confirming a receipt of the electronic mail confirming successful transmission of the notification, notice or document.
- (2) If a compliance notice is to be served on or given to a person who is the owner or occupier of a premises and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to the person by using the words "the owner" or "the occupier".
- (3) A person shall not, at any time within 6 months after a compliance notice is affixed under paragraph (1)(d), remove, damage or deface the notification or compliance notice without lawful authority.
- (4) For the purposes of this Regulation, a company within the meaning of the Companies Act 2014 is considered to be ordinarily resident at its registered office and every other body corporate or unincorporated body is considered to be ordinarily resident at its principal office or place of business.

Part 6

Penalties

Penalties and prosecutions

18. (1) A person who commits an offence under these Regulations is liable–
- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 6 months or to both, or
 - (b) on conviction on indictment, to a fine not exceeding €500,000 or to imprisonment for a term not exceeding 3 years or to both.
- (2) An offence under these Regulations may be prosecuted summarily by the Minister.
- (3) If an offence under these Regulations is committed by a body corporate and is proven to have been so committed with the consent, connivance or approval of or to have been attributable to the wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate

or a person who was purported to act in any such capacity, that person, as well as the body corporate, commits an offence and is liable to be proceeded against and punished as if he or she was guilty of the offence.

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

(5) In proceedings alleging a contravention of these Regulations, it is a defence for the defendant to show he or she acted in accordance with a derogation or transitional measure laid down by an act of an institution of the European Union relevant to the subject of the offence it is alleged that he or she committed.



GIVEN under my Official Seal,
28 April, 2021.

CHARLIE MCCONALOGUE,
Minister for Agriculture, Food and the Marine.

EXPLANATORY NOTE

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

These regulations transpose Commission Directive 2019/633/EC and establish a minimum list of prohibited unfair trading practices in business-to-business relationships in the agricultural and food supply chain and lay down minimum rules concerning the enforcement of those prohibitions and arrangements for coordination between enforcement authorities.

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