

S.I. No. 639 of 2002

European Communities (Requirements to Indicate Product Prices) Regulations 2002

I, Mary Harney, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act, 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998¹, hereby make the following regulations:

1. (1) These Regulations may be cited as the European Communities (Requirements to Indicate Product Prices) Regulations 2002.
- (2) These Regulations shall come into operation on the 1st day of March 2003.

2. (1) In these Regulations -

“advertisement” means an advertisement promoting the sale of a product but does not include an advertisement promoting the sale of a product by means of a distance contract, catalogue, price list, container or label;

“consumer” means a natural person who buys a product for purposes that do not fall within the sphere of his or her commercial or professional activity;

“Directive” means Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers;

“Director” means the Director of Consumer Affairs;

“distance contract” means a contract for the sale of a product entered into by a trader and a consumer by any means, or in any manner, not involving those persons being present together;

“itinerant trader” means a trader who, as a pedestrian, or from a train, aircraft, vehicle, ship, stall, barrow or other mobile sales unit, offers products to consumers other than by means of pre-printed material;

¹ O.J. No. L 80, 18.3.98, p. 27

“net drained weight” means the weight of a solid food product contained in a liquid medium (within the meaning of paragraph 4 of Article 8 of Directive 2000/13/EC of the European Parliament and of the Council relating to the labelling, presentation and advertising of foodstuffs²);

“premises” includes any building, shop, store, dwelling, kiosk, temporary construction, or an area in any of the foregoing in which trading is carried on pursuant to a franchise or concession;

“products sold in bulk” means products which are not pre-packaged and are measured in the presence of the consumer;

“selling price” means the final price in euro, including value-added tax and all other taxes, for a unit of a product, or a given quantity of a product;

“trader” means any natural or legal person who sells or offers for sale products which fall within the sphere of his or her commercial or professional activity;

“unit price” means the final price in euro, including value-added tax and all other taxes, for one kilogram, one litre, one metre, one square metre or one cubic metre of a product or, in respect of a product mentioned in the first column of the Schedule, the final price in euro, including value-added tax and all other taxes, for the number of units specified in the second column of the Schedule opposite such mention.

(2) In these Regulations -

(a) a reference to a Regulation or the Schedule is a reference to a Regulation of, or the Schedule to, these Regulations, unless it is indicated that reference to some other provision is intended, and

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

(3) A word or expression that is used in these Regulations and is also used in the Directive has, unless the contrary intention appears, the same meaning in these Regulations as it has in the Directive.

3. These Regulations do not apply to -

(a) products supplied in the course of the provision of a service, and

(b) sales by auction or sales of works of art and antiques.

² O.J. No. L 109, 6.5.2000, p. 29

4. (1) Subject to paragraph (2), where a trader indicates that a product is or may be for sale to a consumer, he or she shall indicate the selling price of that product in accordance with these Regulations.

(2) Paragraph (1) does not apply in respect of -

(a) products sold in bulk, or

(b) an advertisement for a product.

(3) A person who contravenes this Regulation is guilty of an offence.

5. (1) Subject to paragraphs (2) and (3) and (4), where a trader indicates that a product is or may be for sale to a consumer, he or she shall indicate the unit price of the product in accordance with these Regulations.

Paragraph (1) does not apply in relation to a product -

(a) which is pre-packaged with a content equal to or less than 50 grams or 50 millilitres;

(b) the selling price of which is not related to the quantity of that product being offered for sale;

(c) the unit price of which is identical to its selling price;

(d) the selling price of which has been reduced from the usual price at which it is sold on account of its damaged condition or the danger of its deterioration;

(e) which comprises an assortment of different items sold in a single package;

(f) which is sold from an automatic dispenser or a vending machine from which different products are offered for sale, or

(g) which is sold other than in bulk -

(i) in a premises in which the trader does not make use of equipment for printing shelf edge labels or equipment for point of sale scanning, or

by an itinerant trader.

Any question as to whether the selling price of a product is related to the quantity of that product being offered for sale shall be determined by the Director.

Paragraph (1) applies in relation to an advertisement for a product except where –

- (a) the selling price of the product is not indicated in the advertisement, or
- (b) the advertisement is:
 - (i) solely aural,
 - (ii) broadcast on television, or
 - (iii) shown in a cinema.

A person who contravenes this Regulation is guilty of an offence.

6. (1) A trader shall ensure that the indication of the selling price and where appropriate, the unit price of a product offered by him or her to consumers or to prospective consumers is –

- (a) unambiguous, easily identifiable as referring to that product,
- (b) clearly visible and legible to prospective customers, and
- (c) in proximity to the product or, in the case of a product for sale by distance contract, to the description of the product.

(2) Where a trader offers products for sale at less than the selling price or the unit price previously applicable, the indication of the reduced prices in accordance with these Regulations may be effected by reference to a reduction of the prices by a fraction or percentage of the previous prices indicated by a general notice or any other visible means if the particulars of the reduction are -

- (a) unambiguous and easily identifiable as referring to those products; and
 - (b) clearly visible and legible to prospective consumers.
- (3) A person who contravenes paragraph (1) is guilty of an offence.

7. (1) Where a pre-packaged solid food product is offered for sale in a liquid medium -

(a) it shall be sufficient to indicate in accordance with these Regulations the unit price of the net drained weight; and

(b) if the unit price of the net weight is also indicated in accordance with these Regulations, the trader concerned shall ensure that it shall be clear to which weight each unit price refers.

A person who contravenes this Regulation is guilty of an offence.

8. (1) Where, in the opinion of the Director, a trader is contravening or has contravened these Regulations, the Director may apply to the Circuit Court for an order requiring the trader to do or to refrain from doing anything the doing or refraining from the doing of which is, in the opinion of the Director, necessary or expedient to ensure compliance by the trader with these Regulations.

On the hearing of an application under paragraph (1) (“an application”) the Circuit Court may make an order under that paragraph or an order refusing the application or making such other provision as it considers appropriate.

The Director shall cause notice of the intention to make an application to be given to the trader concerned and to be published in *Iris Oifigiúil* and in at least 2 national newspapers and in any other manner that the Circuit Court may direct.

Every person claiming to have an interest in an application shall be entitled to appear before and be heard by the Circuit Court on the hearing of the application.

On an application, it shall not be necessary for the Director to prove –

actual loss or damage, or

recklessness or negligence on the part of the trader concerned.

On an application, the onus of proving compliance with these Regulations shall be on the trader concerned.

On an application, the Circuit Court shall take account of all the interests involved and in particular the public interest.

Paragraph (1) is without prejudice to the right of a consumer to invoke the provisions of these Regulations in any case before a court.

Without prejudice to the power of the Circuit Court to enforce an order made under this section, a person who contravenes such an order is guilty of an offence.

9. (1) The Director may appoint persons to be authorised officers for the purposes of these Regulations.

(2) An authorised officer when exercising a power under these Regulations shall, if so requested by a person affected, produce to the person evidence in writing of his or her appointment as an authorised officer.

(3) The Director may revoke the appointment of an authorised officer.

(4) An authorised officer may, for the purposes of these Regulations and the Directive -

(a) at all reasonable times enter a premises, if there are reasonable grounds for believing that any trade, business or profession involving the sale of products to consumers is carried on there and search the premises and inspect any products, indications of selling prices or unit prices or records found there,

(b) secure for later inspection any such records or any part of the premises in which such records are kept or there are reasonable grounds for believing that such records are kept,

(c) inspect and take copies of, or of extracts from, any such records (including in the case of such records in a non-legible form a copy of, or of an extract, from such records in a permanent, legible form),

(d) require any person who is carrying on the trade, business or profession or any of his or her employees to produce to the officer any such records relating to the trade business or profession in his or her possession or procurement and, in the case of any such records in a non-legible form, to reproduce them in a permanent, legible form or to give to the officer such information within his or her knowledge or procurement as he or she may reasonably require in relation to any entries in such records,

(e) inspect and copy or extract information from any data (within the meaning of the Data Protection Act 1988 (No. 25 of 1988)) found or produced to the officer under this Regulation,

(f) remove and retain any such records for such period as may be reasonable for further examination and copying,

(g) require a person found on the premises to give to the officer any information within his or her knowledge or procurement which the officer may reasonably require in regard to the trade, business or profession being carried on there or in regard to the persons carrying it on or their employees,

(h) require any person by or on whose behalf data equipment is or has been used on the premises or any person having charge of, or otherwise concerned with the operation of, such data equipment or any associated apparatus or material, to afford to the officer all reasonable assistance in relation thereto,

(i) require any other person employed in connection with the trade, business or profession to give to the officer any information within his or her knowledge or procurement which the officer may reasonably require in regard to the trade, business or profession and to produce to the officer any records which are in that person's possession or control.

(5) An authorised officer shall not, without the consent of the occupier, enter a premises, or a part of a premises, used as a dwelling unless he or she has obtained a warrant from the District Court under Regulation 10 authorising such entry.

(6) An authorised officer may, if he or she considers it necessary, be accompanied by a member of the Garda Síochána when exercising any powers conferred on an authorised officer by these Regulations.

(7) A person who obstructs or interferes with an authorised officer in the exercise of his or her powers under these Regulations or gives to an authorised officer information that is, to his or her knowledge, false or misleading or who does not comply with a requirement of such an officer under these Regulations is guilty of an offence.

10. If a judge of the District Court is satisfied on the sworn information of an authorised officer that there are reasonable grounds for believing that information required by an authorised officer under these Regulations is held on any premises, or a part of any premises, occupied as a dwelling, the judge may issue a warrant authorising an authorised officer, accompanied, if appropriate, by other authorised officers, or a member or members of the Garda Síochána at any time or times within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter, if need be by the use of reasonable force, the premises or the part of the premises and there exercise all or any of the powers conferred on an authorised officer under Regulation 9.

11. Where an offence under these Regulations has been committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of a person being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person as well as the body corporate is 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.

12. (1) An offence under these Regulations may be prosecuted by the Director.

(2) A person guilty of an offence under these Regulations is liable on summary conviction to a fine not exceeding €3,000.

13. The following Regulations are revoked:

the Retail Prices (Potatoes) Display Order 1977 (S.I. No. 11 of 1977),

the Retail Prices (Food) Display Order 1977 (S.I. No. 127 of 1977),

(c) the European Communities (Requirements to Indicate Product Prices) Regulations 2001 (S.I. No. 422 of 2001).

SCHEDULE

Regulation 2

Relevant units of quantity for specific products for the purpose of the definition of
“unit price” in Regulation 2

PRODUCT	UNITS OF QUANTITY
Wines, sparkling wine, liquor wine, fortified wine	75cl
Spirits as defined by Article 1 of Council Regulation (EEC) No.1576/89 of 29 May 1989 laying down general rules on the definition, description and presentation of spirit drinks	70cl

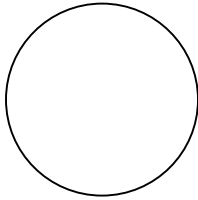
GIVEN under my Official Seal

this 20th of December 2002

Mary Harney

Minister for Enterprise, Trade and

Employment



EXPLANATORY NOTE

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

These Regulations replace the European Communities (Product Prices) Regulations 2001, S.I. 422 of 2001, which gave effect to Directive 98/6/EC of the European Parliament and of the Council of 16 February 1998 on consumer protection in the indication of the prices of products offered to consumers. The Regulations apply to most products offered for sale by traders to consumers. Subject to the exceptions specified, where traders indicate that a product is or may be for sale to consumers, they are required to indicate the selling price and the unit price of that product in accordance with the provisions of the Regulations. The indication of the selling price and of the unit price must be clearly visible. The Regulations are enforced by the Director of Consumer Affairs.

P.N. 12656

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