



STATUTORY INSTRUMENTS.

S.I. No. 360 of 2011



EUROPEAN COMMUNITIES (CARNATION LEAF-ROLLERS)
REGULATIONS 2011

(Prn. A11/1212)

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I, SIMON COVENEY, Minister for Agriculture, Fisheries and Food, 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 Council Directive 74/647/EEC of 9 December 1974¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Carnation Leaf-Rollers) Regulations 2011.

Interpretation

2. (1) In these Regulations—

“authorised officer” means—

(a) a person appointed under Regulation 6, and

(b) an officer of Customs and Excise;

“Council Directive” means Council Directive 74/647/EEC of 9 December 1974;

“Minister” means Minister for Agriculture, Fisheries and Food;

“sell” includes offer, expose or keep for sale, invite an offer to buy, or distribute for reward or otherwise (whether directly or through another person);

“supply” means to give without reward.

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

Harmful Organism

3. (1) A person shall not introduce or cause or permit another person to introduce carnation leaf-roller or a plant or fruit affected with carnation leaf-roller into the State.

(2) A person shall not have in his or her possession or control, sell, supply, cultivate or move within the State a carnation leaf-roller or, subject to Regulation 4(2), a plant or fruit affected by carnation leaf-roller.

¹O.J. No. L352 of 28.12.1974, p.41

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 12th July, 2011.*

Imports of the Specified Plants

4. (1) If a plant or fruit become affected by carnation leaf-roller, a person shall treat them in such a way that the plant or fruit is no longer so affected when put into circulation.

(2) Notwithstanding paragraph (1), cut carnations slightly affected by carnation leaf-roller may be put into circulation from 16 October to 30 April each year.

Exemptions

5. These Regulations do not apply in relation to an act or omission done or made for scientific purposes, test or selection work, authorised by the Minister for Agriculture, Fisheries and Food.

Appointment of Authorised Officer

6. (1) The Minister may, by instrument in writing, appoint such and so many persons or a class of persons as he or she thinks fit to be authorised officers for the purposes of some or all of the functions of an authorised officer as may be specified in the instrument.

(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.

(3) An appointment as an authorised officer ceases—

(a) if it is terminated under paragraph (2),

(b) if it is for a fixed period, on the expiry of that period, or

(c) if the person appointed is an officer of the Minister upon the person ceasing to be such an officer.

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

(5) An officer of the Minister shall furnish an authorised officer (other than an officer of Customs and Excise) with a warrant of his or her appointment as an authorised officer and, when exercising a power conferred on him or her, the officer or officer of Customs and Excise 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

7. (1) If an authorised officer or officer of Customs and Excise has reasonable cause to suspect that—

(a) carnation leaf-roller or a plant or fruit affected with carnation leaf-roller is present, have been present or may be present on a premises,

- (b) carnation leaf-roller or a plant or fruit affected with carnation leaf-roller are or have been kept, cultivated, stored or otherwise dealt with on a premises,
- (c) equipment, plant or machinery used in connection with a carnation leaf-roller may be on a premises,
- (d) a document relating to a thing referred to in paragraph (a), (b) or (c) is present, was present or may be present on a premises,

the officer or member may enter the premises and he or she may—

- (i) search the premises,
- (ii) stop a vehicle, vessel or container,
- (iii) board and search a vehicle, vessel or container,
- (iv) examine a plant or fruit that is suspected of being affected with carnation leaf-roller,
- (v) take, without payment, samples of a plant or fruit or an article, substance or liquid as he or she may reasonably require and carry out or cause to be carried out on a sample such tests, analyses, examinations or inspections as he or she considers necessary or expedient,
- (vi) require the production of a document (including a document in non-legible form in a legible form) or thing relating to a plant or fruit that is suspected of being affected with carnation leaf-roller,
- (vii) retain a document or thing (for so long as is necessary),
- (viii) make a record using any means including writing, photography or video,
- (ix) give a direction to, or request information of, a person regarding a plant or fruit suspected of being affected with carnation leaf-roller as he or she considers necessary,
- (x) require the name and address of a person and the name and address of any other person including the owner of, or person to whom a plant or fruit suspected of being affected with carnation leaf-roller is being delivered or who is causing it to be delivered,
- (xi) require of a person the ownership, identity and origin of a plant or fruit suspected of being affected with carnation leaf-roller,
- (xii) require a person in charge or control of a vessel, vehicle or container to refrain from moving it, or

(xiii) mark or otherwise identify a plant or fruit suspected of being affected with carnation leaf-roller or a sample taken under subparagraph (v).

(2) If an authorised officer or officer of Customs and Excise has reasonable cause to suspect that-

- (a) an offence is being or has been committed under these Regulations,
- (b) a contravention of the Council Directive relating to a plant or fruit suspected of being affected with leaf-roller is being or has been committed, or
- (c) evidence of an offence or contravention under paragraph (a) or (b) may be, is or has been on a premises—the officer or member may, in addition to the powers exercisable by him or her under paragraph (1)—
 - (i) seize and detain a plant or fruit suspected of being affected with leaf-roller,
 - (ii) dispose of, or require the owner or person in charge of or in possession of a plant or fruit suspected of being affected with leaf-roller to deal with or dispose of it (or any equipment, machinery, plant or other thing used in connection with, or that may have been in contact with, the plant or fruit suspected of being affected with leaf-roller) in a manner that the authorised officer sees fit.

(3) An authorised officer or officer of Customs and Excise shall not enter, except with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 8 other than if he or she has reasonable cause to suspect that before a search warrant could be sought in relation to the dwelling anything to which paragraph (1) or (2) relates is being or is likely to be destroyed or disposed of.

(4) An authorised officer may use reasonable force, if necessary, in the exercise of his or her powers under this Regulation.

(5) An authorised officer, when exercising a power 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 power.

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

(7) If in the course of exercising any powers under this Regulation an authorised officer or officer of Customs and Excise finds or comes into possession of any thing that the officer or member believes to be evidence of an offence or

suspected offence under these Regulations, it may be seized and retained for use in evidence in criminal proceedings.

(8) Nothing in this Regulation operates to prejudice a power conferred by another enactment to search, or to seize or detain property, which may be exercised by an officer of Customs and Excise.

Search Warrant

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

- (a) that there is on a premises, vehicle, vessel or aircraft a plant or fruit suspected of being affected with leaf-roller,
- (b) that there is on a premises, vehicle, vessel or aircraft a document, record or other thing relating to a plant or fruit suspected of being affected with leaf-roller,
- (c) that there is evidence of a contravention of these Regulations therein or thereon,

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 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.

(3) If a premises is entered pursuant to 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.

Obstruction

9. A person shall not—

- (a) obstruct or impede an authorised officer in the exercise of his or her powers under Regulation 7,
- (b) fail, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 7,
- (c) if purporting to give information to an authorised officer for the performance of the officer's powers under Regulation 7—
 - (i) make a statement that he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (ii) fail to disclose a material particular,
- (d) tamper or otherwise interfere with a sample taken under Regulation 7,

(e) aid or abet a contravention of these Regulations.

Offences

10. (1) A person who contravenes Regulation 3, 4 or 9 commits an offence.

(2) A person who commits an offence under these Regulations is liable on summary conviction, to a Class A Fine in accordance with the Fines Act 2010.

(3) An offence under these Regulations may be prosecuted by the Minister.

(4) 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.

(5) If the affairs of a body corporate are managed by its members, paragraph (4) 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.

Revocations

11. The European Communities (Carnation Leaf-Rollers) Regulations 2010 (S.I. No. 563 of 2010) are revoked.



GIVEN under my Official Seal,
30 June 2011.

SIMON COVENEY,
Minister for Agriculture, Fisheries and Food.

EXPLANATORY NOTE

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

The Regulations lay down measures to prevent the spread of carnation leaf-rollers, pests which attack carnation plants, and give powers to the Minister for Agriculture, Fisheries and Food for this purpose.

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