



STATUTORY INSTRUMENTS.

S.I. No. 211 of 2012



EUROPEAN COMMUNITIES (PHYTOSANITARY MEASURES)
(BROWN ROT IN EGYPT) REGULATIONS 2012

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I, SIMON COVENEY, 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 full effect to Commission Implementing Decision 2011/787/EU of 29 November 2011¹, hereby make the following Regulations—

Citation

1. These Regulations may be cited as the European Communities (Phytosanitary Measures) (Brown Rot in Egypt) Regulations 2012.

Interpretation

2. (1) In these Regulations—

“authorised officer” means—

(a) a person appointed under Regulation 5,

(b) an authorised officer within the meaning of the Principal Regulations 2004,

(c) a member of the Garda Síochána, or

(d) an officer of Customs and Excise;

“Commission Decision” means Commission Implementing Decision 2011/787/EU of 29 November 2011;

“harmful organism” means *Ralstonia solanacearum* (Smith) Yabuuchi et al. (also known as *Pseudomonas solanacearum* (Smith) Smith);

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

“Principal Regulations” means the European Communities European Communities (Control of Organisms Harmful to Plants and Plant Products) Regulations 2004 (S.I. No. 894 of 2004);

“premises” includes land with or without buildings, a vehicle (including a boat, ship, hovercraft, aircraft or offshore installation) (being an offshore installation within the meaning of the Safety, Health and Welfare (Offshore Installations) Act 1987 (No. 18 of 1987)), railway wagon, container or other thing used in connection with, or ancillary to, a thing aforesaid;

¹O.J. No. L 319 of 02.12.2011, p.112

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 22nd June, 2012.*

“tubers” means tubers of *Solanum tuberosum* L. originating in Egypt.

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

Harmful organism

3. (1) A person shall not introduce or cause or permit another person to introduce a harmful organism into the State.

(2) A person shall not have in his or her possession or under his or her control or move within the State a harmful organism that has been introduced into the State in contravention of paragraph (1).

Susceptible plants and plant products

4. (1) A person shall not introduce tubers into the State unless—

- (a) they originate in a pest-free area referred to in Article 1(2) of the Commission Decision,
- (b) they are inspected, on entry into the State, by an authorised officer, and
- (c) they are, following inspection under paragraph (b), free of the harmful organism.

(2) A person shall not have in his or her possession or under his or her control, sell, supply or otherwise deal with tubers introduced into the State in contravention of paragraph (1).

Appointment of Authorised Officer

5. (1) The Minister may, by instrument in writing, appoint such and so many persons as he or she thinks fit to be authorised officers for the purposes of some or all of these Regulations 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 pursuant to 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 that paragraph relates.

(5) An authorised officer shall be furnished with a warrant of his or her appointment as an authorised officer and, when exercising a power conferred on him or her, the officer, an officer of Customs and Excise or a member of the Garda Síochána 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 an Authorised Officer

6.. (1) For the purposes of these Regulations an authorised officer may—

- (a) enter and inspect, at all reasonable times, a premises of which he or she has reasonable grounds for believing that—
 - (i) a tuber is, may be or has been present,
 - (ii) a record relating to a tuber is, may be or has been present, or
 - (iii) equipment or machinery used in connection with a tuber is, may be or has been present, or
 - (iv) take, without making a payment, a sample from tubers or other thing as he or she may reasonably require and carry out or cause to be carried out on the sample such tests, analyses, examinations or inspections as he or she considers necessary or expedient;
 - (b) examine tubers,
 - (c) inspect a vehicle, vessel, aircraft, container, equipment, machinery or other thing used in connection with tubers and require a person in charge or control of such a thing to refrain from moving it,
 - (d) require the owner or person in charge of a premises 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,
 - (e) require the name and address of a person, including the owner or person in possession or control of tubers or other thing, or
 - (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.
- (2) Where an authorised officer has reasonable grounds for believing that—
- (a) there is a risk from tubers or a product represented as such a product,
 - (b) an offence is being or has been committed under these Regulations, or
 - (c) evidence of a matter referred to in subparagraphs (a) or (b) or an offence or contravention to which subparagraphs (a) or (b) relates may be, is or has been on a premises,

the officer may, in addition to the powers exercisable by him or her under paragraph (1), do one of more of the following:

- (i) search the premises;
- (ii) if necessary, stop, or cause to have stopped, a vehicle, vessel, aircraft, container, equipment, machinery or other thing used in connection with tubers and may require it to be moved for inspection to such places he or she directs;
- (iii) stop and, where he or she believes there is or may be evidence on a person of an offence referred to in paragraph (c), if the officer is not a member of the Garda Síochána or an officer of Customs and Excise, cause the search of the person in accordance with paragraph (6);
- (iv) give such direction to a person who has tubers, a vehicle, vessel, container, equipment, machinery or other thing used in connection with tubers in his or her possession or under his or her control or information relating to such, as the authorised officer may reasonably consider necessary for the purposes of these Regulations;
- (v) seize and detain tubers, vehicle, container, equipment, machinery, record or other thing;
- (vi) mark or otherwise identify tubers, vessel, vehicle, machinery, equipment or other thing used in connection with tubers or a sample taken under paragraph (1)(a)(iv).

(3) An authorised officer may enter, at all reasonable times, a premises to carry out surveys or programmes relating to tubers.

(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 paragraph (14).

(5) Where a member of the Garda Síochána or an officer of Customs and Excise upon the request of an authorised officer has reasonable grounds for believing that, there is evidence on a person of an offence referred to in paragraph (2)(c), or the member or officer may without warrant—

- (a) search or cause to be searched by such a member or officer the person and, if the member or officer considers it necessary for that purpose, detain the person for such time as is reasonably necessary to carry out the search,
- (b) search or cause to be searched by such a member or officer any vehicle in which the member or officer suspects that such substance may be found and for the purpose of carrying out the search, if any such member or officer thinks fit, require the person who is, for the time

being, in charge or control of the vehicle to bring it to a stop and when stopped to refrain from moving it or, in case the vehicle is already stationary, to refrain from moving it, or

- (c) seize and detain, or cause to be seized and detained by such a member or officer, anything found in the course of a search under this Regulation which any such member or officer reasonably suspects to be something which might be required as evidence in proceedings for an offence referred to in paragraph (2)(c).

(6) Where a member of the Garda Síochána or an officer of Customs and Excise (as the case may be) decides to search or cause to be searched a person under paragraph (5) the member or officer may require the person to accompany that member or officer to either a Garda Síochána station or a customs office for the purpose of being so searched at that station or office.

(7) 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 performance of the power.

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

(9) An authorised officer is not liable in any proceedings for an offence under these Regulations 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 so doing it.

(10) If, in the course of exercising a power under this Regulation, 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, it may be seized and retained for use in evidence in criminal proceedings for an offence under these Regulations.

(11) An authorised officer who is not a member of the Garda Síochána an officer of Customs and Excise in uniform, shall not stop a vehicle in a public place for the purposes of paragraph (2)(ii), unless he or she is accompanied by such a member.

(12) Nothing in these Regulations shall be construed as affecting a power conferred by another enactment to search, or to stop, seize or detain property, which may be exercised by a member of the Garda Síochána or an officer of Customs and Excise.

(13) Nothing in Section 17 of the Industrial and Provident Societies Act 1893 prevents an authorised officer from exercising a power conferred on him or her by this Act.

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

- (a) an offence is being or has been committed under these Regulations,
- (b) evidence of an offence or contravention or intended contravention to which paragraph (a) relates may be, is or has been on a premises,
- (c) there is or was a tuber, document or other record relating to tubers, equipment or other thing made used or adapted for use (including manufacture and transport) in connection with tubers, or
- (d) a document or other record related to a thing to which subparagraph (a), (b) or (c) refers is or may be on the premises,

the judge may issue a search warrant.

(15) 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.

(16) 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.

Disposal Notice

7. (1) If an authorised officer is of the opinion that—

- (a) a harmful organism has been introduced, moved, held in possession or is to be exported from the State in contravention of these Regulations,
- (b) tubers including any material in which the tuber is packed is infected with the harmful organism or has been in contact with the organism, or
- (c) measures should be taken to prevent infestation or contact with the harmful organism,

he or she may serve or cause to be served on the owner or person who appears to be in charge, possession or control of the harmful organism, a notice (in this Regulation referred to as a “Disposal Notice”) stating that opinion and directing that—

- (i) the tubers be kept in such premises (including on board a vessel or aircraft or on a vehicle) as the officer shall specify in the notice,
- (ii) such alterations be made to the premises in which the tubers are located as the officer shall specify in the notice,

(iii) the tubers be treated, destroyed or disposed of in such manner as the officer shall specify in the notice, or

(iv) the tubers be removed from the State in such manner (if any) as may be specified.

(2) A person, including the master, captain, owner or operator of a vessel or aircraft shall comply with a disposal notice or a requirement of a disposal notice unless and until the notice is annulled under paragraph (10).

(3) A requirement contained in a disposal notice shall specify a time limit within which the notice is to be complied with.

(4) A requirement specified in a disposal notice (in this paragraph referred to as “the earlier disposal notice”) may be amended or withdrawn by a further notice in writing and the earlier disposal notice shall have effect subject to such amendment or withdrawal.

(5) A disposal notice, whether amended under paragraph (4) or not, may require the owner or person in charge of the tubers to choose between one or more of the requirements specified in the disposal notice and that person shall comply with the requirement that he or she chooses.

(6) (a) A disposal notice shall, subject to sub-paragraph (b), be addressed to the person concerned by name, and may be served on or given to the person in one of the following ways—

(i) by delivering it to the person,

(ii) by leaving it at the address at which the person ordinarily resides or, in a case where an address for service has been furnished, at that address,

(iii) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case where an address for service has been furnished, at that address, or

(iv) where the address at which the person ordinarily resides cannot be ascertained by reasonable enquiry and the disposal notice relates to a premises, by delivering it to some person over 16 years of age resident or employed on the premises or by affixing it in a conspicuous position on or near the premises,

(b) where a disposal 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, the occupier or, as the case may require, such other designation as the authorised officer considers appropriate,

- (c) a person shall not at any time within 6 months after a disposal notice is affixed under paragraph (6)(a)(iv) remove damage or deface the notice without lawful authority,
- (d) for the purposes of this Regulation, a company within the meaning of the Companies Acts, 1963 to 1990, shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body shall be deemed to be ordinarily resident at its principal office or place of business.

(7) A person, being a person affected by a disposal notice, may, within 7 days of service of the disposal notice, apply to the Judge of the District Court having jurisdiction in the District Court District where the subject of the notice is situated or to the Judge of the District Court having jurisdiction in the District Court District where the person ordinarily resides on the grounds that the disposal notice or any term of the disposal notice are not reasonable, having regard to these Regulations (in this Regulation referred to as “an appeal”).

(8) An appeal may be heard at any sitting of the District Court within the appropriate District Court Area.

(9) Notice of an appeal, which shall contain a statement of the grounds upon which it is alleged that the disposal notice or any term of the disposal notice is unreasonable having regard to these Regulations, shall be served on the Minister at least 48 hours prior to the hearing of the appeal and a copy thereof shall be lodged with the appropriate District Court Clerk.

(10) On the hearing of an appeal, a Judge of the District Court may confirm, with or without modification, or annul a disposal notice.

(11) A person, including a person on whom a disposal notice is served, shall not-

- (a) pending the determination of an appeal, deal with the tubers or other thing to which a disposal notice relates other than under and in accordance with the notice, or
- (b) after such appeal, deal with the tubers or other thing to which a disposal notice relates other than under and in accordance the Disposal Notice as modified, as the case may be.

(12) Where—

- (a) a person, by act or omission, fails to comply, whether within the time specified therein or otherwise, with a disposal notice (including a disposal notice modified in accordance with paragraph (10)), or
- (b) an authorised officer has reasonable cause to suspect—

- (i) that a disposal notice (including a disposal notice modified in accordance with paragraph (10)) is not or will not be complied with, or
- (ii) pending the determination of an appeal, the tubers to which the disposal notice relates is or will not be dealt with in accordance with paragraph (11),

an authorised officer may seize and detain the tubers or other thing and sell or dispose of the tubers or other thing in a manner as the authorised officer considers appropriate.

(13) Subject to paragraph (15), the proceeds of the sale or disposal of the tubers or other thing under paragraph (12) shall be paid to the owner as soon as may be after such sale or disposal and after a person has satisfied the Minister that he or she is the owner or otherwise entitled to the proceeds of the sale or disposal.

(14) The costs of seizure, sale or disposal of the tubers or other thing under this Regulation shall be recoverable by the Minister as a simple contract debt in a court of competent jurisdiction or by deducting the costs from any monies due from the Minister to the owner of the tubers or other thing.

(15) The costs of any action required by a disposal notice shall be borne by the owner of the tubers or other thing to which the notice relates.

Obstruction

8. A person shall not—

- (a) obstruct or impede an authorised officer in the exercise of any of his or her powers under these Regulations,
- (b) fail, without reasonable excuse, to comply with a requirement or direction made by an authorised officer under Regulation 6(2) or 7, or
- (c) in purporting to give information required by an authorised officer for the performance of the officer's powers under Regulation 6—
 - (i) make a statement which he or she knows to be false in a material particular or recklessly make a statement which is false in a material particular, or
 - (i) fail to disclose any material particular.

Offences

9. (1) A person who contravenes Regulation 3, 4, 7(2), 7(6)(c), 7(11) or 8 commits an offence and is liable on conviction to a Class A fine in accordance with the Fines Act 2010 or to a term of imprisonment not exceeding six months or to both.

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

(3) If an offence under these Regulations has been committed by a body corporate and it 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 who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate, or a person purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the first-mentioned offence.

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

Revocations

10. The following Statutory Instruments are revoked:

(1) European Communities (Phytosanitary Measures) (Brown Rot in Egypt) Regulations 2007, (S.I. No. 261 of 2007).

(2) European Communities (Phytosanitary Measures) (Brown Rot in Egypt) (Amendment) (Regulations) 2011, (S.I. No. 282 of 2011).



GIVEN under my Official Seal,
12 June 2012.

SIMON COVENEY,
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 revise emergency phytosanitary measures to prevent the introduction into and the spread within the Community of *Ralstonia solanacearum* (Smith) Yabuuchi et al. as regards potatoes from Egypt.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
OIFIG DHÍOLTA FOILSEACHÁN RIALTAIS,
TEACH SUN ALLIANCE, SRÁID THEACH LAIGHEAN, BAILE ÁTHA CLIATH 2,
nó tríd an bpost ó
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AONAD 20 PÁIRC MIONDÍOLA COIS LOCHA, CLÁR CHLAINNE MHUIRIS,
CONTAE MHAIGH EO,
(Teil: 01 - 6476834 nó 1890 213434; Fax: 094 - 9378964 nó 01 - 6476843)
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