



STATUTORY INSTRUMENTS.

S.I. No. 564 of 2010



EUROPEAN COMMUNITIES (POULTRY AND HATCHING EGGS)
REGULATIONS 2010

(Prn. A10/1763)

EUROPEAN COMMUNITIES (POULTRY AND HATCHING EGGS)
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I, BRENDAN SMITH, 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 2009/158/EC of 30 November 2009¹, Commission Regulation (EC) No. 617/2008 of 27 June 2008² as amended by Commission Regulation (EC) No. 557/2010 of 24 June 2010³ and Council Regulation (EC) No. 1234/2007 of 22 October 2007⁴ as amended by Council Regulation (EC) No. 361/2008 of 14 April 2008⁵ in so far as it concerns marketing standards for eggs for hatching and farmyard poultry chicks, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (Poultry and Hatching Eggs) Regulations 2010.

Interpretation

2. (1) In these Regulations—

“authorised officer” means—

- (a) an authorised officer within the meaning of section 17A (inserted by section 2 of the Diseases of Animals (Amendment) Act 2001 (No. 3 of 2001)) of the Diseases of Animals Act 1966 (No. 6 of 1966), or
- (b) a person authorised under the Poultry Hatcheries Act 1947 (No. 49 of 1947) to be an inspector or for the purposes of that Act;

“Directive” means Council Directive 2009/158/EC of 30 November 2009 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs;

“EC Regulations” means Commission Regulation (EC) No. 617/2008 of 27 June 2008 as amended by Commission Regulation (EC) No. 557/2010 of 24 June 2010 and Council Regulation (EC) No. 1234/2007 of 22 October 2007 as amended by Council Regulation (EC) No. 361/2008 of 14 April 2008 in so far as it concerns marketing standards for eggs for hatching and farmyard poultry chicks;

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

¹O.J. No. L 343 of 22.12.2009, p.74

²O.J. No. L 168 of 28.6.2008, p.5

³O.J. No. L 159 of 25.6.2010, p.13

⁴O.J. No. L 299 of 16.11.2007, p.1.

⁵O.J. No. L 121 of 7.5.2008, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 3rd December, 2010.*

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

Compliance with legislation

3. (1) A person shall not market, mark, pack, transport, identify, import or export eggs for hatching or farmyard poultry chicks except in accordance with the EC Regulations.

(2) A person shall not engage in intra-Community trade in, or the importation from third countries of, poultry or hatching eggs except in accordance with Articles 5 to 26 of the Directive.

(3) A person shall not have in his or her possession or control poultry or hatching eggs that are being, or have been, traded or imported in contravention of Articles 6, 8, 9, 10, 11, 12, 14, 15, 18, 19, 20, 22, 23, 24, 25 and 26 of the Directive.

Registration and approval of establishments

4. (1) (a) An owner or person in charge or control of an establishment shall apply to the Minister for registration in compliance with the EC Regulations.

(b) The Minister may approve an establishment for the purposes of Article 6 of the Directive.

(2) The Minister may register or approve an establishment under paragraph (1), refuse an application for registration or approval or revoke a registration or approval.

(3) An application for registration or approval shall be made in a form, be accompanied by any material and contain any particulars that the Minister determines.

(4) The Minister shall not consider an application if the application does not contain all the material and particulars sought by the Minister.

(5) The Minister may attach conditions to a registration or an approval, revoke or vary a condition or attach a new condition.

(6) Without prejudice to the generality of paragraph (2) or to Regulation 5 the Minister may refuse an application for registration or approval or revoke a registration or an approval if he or she is satisfied that—

(a) the applicant or registered person has failed to comply with a condition of registration or approval,

(b) the applicant or registered person is not, in the opinion of the Minister, a fit and proper person to own or be in charge of a registered or approved establishment,

- (c) a requirement of these Regulations, the EC Regulations or the Directive applicable to such establishment has not been, or is not being, fulfilled,
 - (d) a requirement specified in a notice issued under Regulation 14 has not been fulfilled,
 - (e) the facilities and assistance for the carrying out of functions of authorised officers are not provided at the establishment or
 - (f) information required has not been furnished or information that is furnished is, in the opinion of the Minister, false or misleading in a material particular.
- (7) If the Minister proposes to refuse an application or revoke a registration or an approval or to attach conditions to a registration or an approval he or she shall-

- (a) notify the applicant or holder of the registration or approval in writing of the proposal and of the reasons for the proposal and that he or she may make representations in writing to the Minister in relation to the proposal within 14 days from the date of the notification,
- (b) consider representations made before deciding whether to proceed with, modify or annul the proposal, and
- (c) notify the person in writing of the decision and the reasons for the decision.

(8) An establishment that, at the date of entry into force of these Regulations, is in receipt of a poultry hatchery licence or a provisional permit for an egg supply farm under the Poultry Hatcheries Act 1947 (No. 49 of 1947) shall be regarded as a registered establishment under paragraph (1) (a) and shall be dealt with as if registered under these Regulations.

(9) An establishment that, at the date of entry into force of these Regulations, is an approved establishment under the European Communities (Live Poultry and Hatching Eggs) Regulations 1992 (S.I. No. 362 of 1992) shall be regarded as an approved establishment under paragraph (1)(b) and shall be dealt with as if approved under these Regulations.

Suspension and withdrawal of approval

5. (1) The Minister shall suspend, withdraw or restore an approval granted under Regulation 4(1)(b) in accordance with Chapter IV of Annex II of the Directive without affording the opportunity to make the representations referred to in Regulation 4(7).

(2) The Minister may suspend registration or approval granted under Regulation 4(1) when a notice is issued under Regulation 14 without affording the opportunity to make the representations referred to in Regulation 4(7) and may

restore the registration or approval when the requirements specified in the notice have been fulfilled to his or her satisfaction.

Fees

6. (1) The Minister may set and charge fees in respect of the registration or approval of establishments under Regulation 4.

(2) Moneys received under this Regulation shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance. The Public Offices Fees Act 1878 (42 & 43 Viet. Cap 58) does not apply to a fee charged pursuant to this Regulation.

Veterinary certificate

7. (1) A person shall not send poultry or hatching eggs to another Member State unless the consignment is accompanied by the appropriate veterinary certificate referred to in Article 20 and fulfilling the requirements of Annex IV of the Directive.

(2) An application for a veterinary certificate shall be made to the Minister at least seven working days prior to dispatch of the consignment and such application shall be in a form, be accompanied by and contain any particulars specified by the Minister.

Authorised officer

8. The European Communities (Agriculture, Fisheries and Food) (Compliance) Regulations 2009 (S.I. No. 424 of 2009) apply to these Regulations.

Compliance notice

9. (1) If an authorised officer is of the opinion that poultry or hatching eggs are being or have been dealt with other than in accordance with these Regulations, the EC Regulations or the Directive he or she may serve or cause to be served on the owner or person in charge of the poultry or hatching eggs a notice (“compliance notice”) stating that opinion and directing that—

- (a) the poultry or hatching eggs not be sold or supplied,
- (b) such action be taken, in the manner (if any) specified in the notice, as is necessary to make the poultry or hatching eggs comply with these Regulations, the EC Regulations or the Directive and that proof of compliance be provided to the officer,
- (c) the poultry or hatching eggs be destroyed in a manner and at a place (if any) that the officer directs, or
- (d) the poultry or hatching eggs be used or disposed of in a manner that the officer directs.

(2) A person shall not contravene a compliance notice.

(3) A compliance notice may specify one or more requirements.

(4) A requirement contained in a compliance notice may specify a time limit within which it is to be complied with.

(5) A compliance notice may require the owner or person in charge of poultry or hatching eggs to choose between two or more of the requirements specified in the notice.

(6) A requirement specified in a compliance notice (in this Regulation referred to as “the earlier notice”) may be modified or withdrawn in a further compliance notice and in that event the earlier notice shall have effect subject to such modification or withdrawal.

(7) In the event of an appeal made under Regulation 11 a person, including the person appealing, shall not deal with poultry or hatching eggs to which a compliance notice relates pending the determination of the appeal other than in accordance with such directions as shall be given in writing to the appellant by an authorised officer.

(8) If the terms of a compliance notice are confirmed, with or without modification by the Judge of the District Court hearing an appeal under Regulation 11, a person including the person who made the appeal shall not deal with poultry or hatching eggs to which the notice relates other than in accordance with the notice as confirmed.

(9) A person upon whom a compliance notice is served shall deal with the poultry or hatching eggs to which the notice relates—

- (a) in accordance with the compliance notice if no appeal is made under Regulation 11 or
- (b) if an appeal is made, in accordance with the compliance notice as confirmed with or without modifications.

(10) Any costs associated with actions required to comply with a compliance notice will be borne by the owner of the poultry or hatching eggs to which the notice relates.

Service of compliance notice

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

- (a) by giving it to the person,
- (b) by leaving it at the address at which the person ordinarily resides or, where 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, where an address for service has been furnished, to 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, or
- (e) by electronic communication.

(2) If a compliance notice is to be served on a person who is the owner or person in charge of poultry or hatching eggs and the name of the person cannot be ascertained by reasonable enquiry, it may be addressed to that person by using the words “the owner” or “the person in charge”.

(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 notice without lawful authority.

(4) For the purposes of this Regulation, a company within the meaning of the Companies Acts 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.

Appeal against a compliance notice

11. (1) A person may appeal within 7 days of the service of a compliance notice to the Judge of the District Court having jurisdiction in the District Court District where the poultry or hatching eggs to which the notice relates are situated or to the Judge of the District Court where the person bringing the appeal ordinarily resides or carries on business on the grounds that the notice or any terms thereof are not justified having regard to these Regulations, the EC Regulations or the Directive (“an appeal”).

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

(3) Notice of an appeal shall be served on the Minister at least 2 days prior to the hearing of the appeal by serving it on the Minister or by leaving it at the place and in the manner specified in the compliance notice.

(4) A notice of appeal shall contain a statement of the grounds upon which it is alleged that the notice or any of the terms thereof are not justified.

(5) A copy of the notice of appeal shall be lodged with the District Court Clerk in the manner specified in the compliance notice (if any) at least 2 days prior to the hearing of the appeal.

(6) On the hearing of an appeal under this Regulation a Judge of the District Court may confirm, modify or annul a compliance notice.

Power to seize and dispose of poultry or hatching eggs

12. (1) Without prejudice to Regulation 8, if—

- (a) the owner or person in charge of poultry or hatching eggs fails to comply with the terms of a compliance notice within the time limit specified in the compliance notice,
- (b) an authorised officer has reasonable grounds for believing that the terms of a compliance notice will not be complied with,
- (c) a compliance notice has been confirmed with or without modification under Regulation 11 and the notice has not been complied with,
- (d) an authorised officer has reasonable grounds for believing that the terms of a compliance notice which has been confirmed with or without modification under Regulation 11 will not be complied with, or
- (e) pending the determination of an appeal made pursuant to Regulation 11, an authorised officer has reasonable grounds for believing that a compliance notice or a direction given pursuant to the European Communities (Agriculture, Fisheries and Food) (Compliance) Regulations 2009 has not been or will not be complied with,

an authorised officer may seize the poultry or hatching eggs at such premises as he or she thinks fit.

(2) An authorised officer may sell or dispose of seized poultry or hatching eggs or cause them to be sold or otherwise disposed of or destroyed in such manner and at such place as the authorised officer considers appropriate in the circumstances of the case.

(3) Any profits arising out of the sale or disposal of poultry or hatching eggs under this Regulation shall be paid to the owner or person in charge of the poultry or hatching eggs less any expenses incurred in connection with seizure, sale, disposal or destruction of the poultry or hatching eggs.

(4) The costs (including ancillary costs) of seizure, maintenance, sale, disposal or destruction of poultry or hatching eggs under this Regulation are, subject to paragraph (3), recoverable—

- (a) by deducting the costs from any sum that is or becomes payable by the Minister to the owner or person in charge of the poultry or hatching eggs, or
- (b) as a simple contract debt in any court of competent jurisdiction from the owner or person in charge of the poultry or hatching eggs at the time of disposal.

Forgery

13. (1) A person shall not forge or utter knowing it to be forged a record purporting to be kept and maintained under these Regulations or an act of the institutions of the European Communities cited in these Regulations or a document purporting to be an extract therefrom (hereafter in this Regulation referred to as a “forged document”).

(2) A person shall not alter with intent to defraud or deceive, or utter knowing it to be so altered, a record purporting to be kept and maintained under these Regulations or an act of the institutions of the European Communities cited in these Regulations or a document purporting to be an extract therefrom (hereafter in this Regulation referred to as an “altered document”).

(3) A person shall not have, without lawful authority, in his or her possession or under his or her control a forged document or an altered document.

Contagious disease

14. (1) The owner or person in charge of an establishment approved for the purposes of Article 6 of the Directive shall—

- (a) ensure that the disease surveillance programme referred to in Annex 11 of the Directive is applied and adhered to at the establishment and
- (b) notify an authorised officer of any variation in production performance or any other sign suggesting a contagious poultry disease.

(2) An authorised officer may serve a notice in writing and direct that a disease surveillance programme contain or be modified to contain such provisions and comply with such requirements as are contained in the notice.

(3) If a contagious poultry disease is suspected in a registered or approved establishment an authorised officer may serve a notice in writing and direct that the measures contained in the notice be taken.

(4) Without prejudice to the generality of paragraphs (2) and (3) a notice may specify requirements relating to-

- (a) the number and type of samples to be taken at the establishment,
- (b) the testing of samples at an approved laboratory,
- (c) the frequency with which tests are to be conducted,
- (d) disinfection procedures to be adopted in relation to the establishment,
- (e) restriction on the movement of eggs or poultry,
- (f) other measures to be taken by the person on whom the direction is served and
- (g) the time period within which the direction must be complied with.

(5) A person on whom a notice is served shall comply with the notice.

Records

15. (1) The owner or person in charge of an establishment registered under Regulation 4(1) (a) shall keep, and retain for a period of at least two years, the records referred to in Article 6 and shall communicate the information referred

to in Article 8 of Commission Regulation (EC) No. 617/2008 of 27 June 2008 as amended by Commission Regulation (EC) No. 557/2010 of 24 June 2010.

(2) The owner or person in charge of an establishment approved under Regulation 4(1)(b) shall keep, and retain for a period of at least two years, the records referred to in Annex II of the Directive.

(3) A person to whom a registration or approval is granted shall make such returns to the Minister as and when, and in a form that, the Minister may determine.

Offences and penalties

16. (1) A person who—

- (a) contravenes or aids or abets a contravention of Regulation 3, 7(1), 9(2), 9(7), 9(8), 9(9), 10(3), 13(1), 13(2), 13(3), 14(1), 14(5), 15(1), 15(2), or 15(3),
- (b) contravenes or aids or abets a contravention of Part C of Annex XIV of Regulation (EC) No. 1234/2007 of 22 October 2007 or Articles 3 (in relation to eggs), 4 (in relation to chicks), 5 (in relation to documents to accompany consignments of eggs or chicks), 6 (in relation to records), 7 (in relation to the use of incubated eggs) or 8 (in relation to monthly reports) of Commission Regulation (EC) No. 617/2008 of 27 June 2008 as amended by Commission Regulation (EC) No. 557/2010 of 24 June 2010,
- (c) contravenes or aids or abets a contravention of Articles 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 20, 23, 24, 25, 26 or 30 or Annex II or III of the Directive,
- (d) uses a vaccine for vaccinating poultry that does not have the authorisation referred to in Annex III of the Directive,
- (e) tampers or otherwise interferes with any poultry or hatching eggs seized under Regulation 12 other than in accordance with the direction in writing of an authorised officer or an order of the court,
- (f) tampers or otherwise interferes with any poultry or hatching eggs so as to procure that any sample taken under these Regulations does not correctly represent the poultry or hatching eggs, or
- (g) treats or allows treatment of any bird which causes any sample to be invalid,

commits an offence and is liable on summary conviction to a fine not exceeding €5000 or to imprisonment for a period not exceeding 6 months or to both.

(2) If an offence under these Regulations has been committed by a body corporate and is proved to be so committed with the consent or connivance of,

or 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 commits an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

(3) If the affairs of a body corporate are managed by its members, paragraph (2) 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.

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

Evidence on certificate

17. (1) In proceedings, evidence of an act of the institutions of the European Communities may be given by production of a copy of the act certified by an officer of the Minister to be a copy of the act, and it is not necessary to prove the signature of the officer or that he or she is an officer of the Minister.

(2) Paragraph (1) is in addition to and not in substitution for the European Communities (Judicial Notice and Documentary Evidence) Regulations 1972 (S.I. No. 341 of 1972).

Repeal

18. The European Communities (Live Poultry and Hatching Eggs) Regulations 1992 (S.I. No. 362 of 1992) are revoked.



GIVEN under my Official Seal,
26 November 2010.

BRENDAN SMITH.
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)

These Regulations give effect to European Communities legislation on the marketing standards for, animal health conditions governing intra-Community trade in, and imports from third countries of, live poultry and hatching eggs.

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ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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