



STATUTORY INSTRUMENTS.

**S.I. No. 359 of 2011**

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EUROPEAN COMMUNITIES (POTATO CYST NEMATODES)  
REGULATIONS 2011

**(Prn. A11/1211)**

EUROPEAN COMMUNITIES (POTATO CYST NEMATODES)  
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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 2007/33/EC of 11 June 2007<sup>1</sup>, hereby make the following regulations:

*Citation*

1. These Regulations may be cited as the European Communities (Potato Cyst Nematodes) Regulations 2011.

*Interpretation*

2. (1) In these Regulations—

“authorised officer” means—

- (a) a person appointed under Regulation 8,
- (b) a member of the Garda Síochána, or
- (c) an officer of Customs and Excise;

“demarcated field” means a field subject to a notice under Regulation 4;

“Directive” means Council Directive 2007/33/EC of 11 June 2007;

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

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

*Measures to control potato cyst nematodes*

3. (1) A person shall not introduce or cause or permit another person to introduce material containing potato cyst nematodes into the State unless prior written approval has been granted by the Minister.

(2) A person shall not have in his or her possession or control or move within the State material containing potato cyst nematodes that has been introduced into the State in contravention of paragraph (1).

<sup>1</sup>O.J. L156 of 16.6.2007, p.12

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

*Demarcated field*

4. (1) If the Minister has reasonable cause to believe that potato cyst nematodes are present in a field, the Minister shall serve a notice in writing on the occupier or other person in charge of the field specifying—

- (a) each field to which the notice applies, and
- (b) demarcating the boundaries of each field to which the notice applies.

(2) The Minister may revoke a notice if no potato cyst nematodes are found in the field following officially approved control measures referred to in Section III(C) of Annex III to the Directive.

*Restrictions on planting*

5. (1) A person shall not—

- (a) plant potatoes that are intended for the production of seed potatoes in a demarcated field,
- (b) plant potatoes other than those intended for the production of seed potatoes in a demarcated field unless the field has been subject to an official control programme aiming at least at the suppression of potato cyst nematodes, or
- (c) plant or store a plant listed in Annex I of the Directive that is intended for replanting in a demarcated field.

(2) The Minister by notice in writing containing the measures set down in Section III(A) of Annex III to the Directive, may authorise the planting of a plant listed in point 2 of Annex I to the Directive.

*Control of contaminated potatoes*

6. (1) A person shall not plant seed potatoes or plants listed in point 1 of Annex I to the Directive that come from a demarcated field, or have been in contact with soil from a demarcated field, unless prior written approval has been granted by the Minister.

(2) A person shall not plant a plant listed in point 2 to Annex I to the Directive that have come from a demarcated field, or have been in contact with soil from a demarcated field, unless prior written approval has been granted by the Minister.

(3) A written approval shall contain the measures set out in Section III (A) of Annex III to the Directive.

7. A person shall not move potatoes that come from a demarcated field or have been in contact with soil from a demarcated field for industrial processing or grading plants unless such plants are subject to officially approved measures in accordance with Section III(B) of Annex III.

*Appointment of Authorised officer*

8. (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 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 that paragraph relates.

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

9. (1) If an authorised officer has reasonable cause to suspect that—

(a) a potato or seed potato affected with potato cyst nematodes or a vessel, vehicle, container or trailer used in connection with a potato or seed potato affected with potato cyst nematodes is present, has been present or may be present on a premises,

(b) a potato or seed potato affected with potato cyst nematodes is or has been kept, processed, stored or otherwise dealt with on a premises,

(c) equipment, plant or machinery used in connection with a potato or seed potato affected with potato cyst nematodes has been, is or 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 authorised officer may enter the premises and he or she may—

(i) search the premises,

(ii) stop a person, vehicle, vessel or container,

- (iii) board and search a vehicle, vessel or container,
  - (iv) examine a potato or seed potato, vehicle, vessel, container, equipment, machinery or other thing,
  - (v) take, without payment, samples of a potato or seed potato 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 potato or seed potato, vehicle, vessel, container, equipment, machinery or other thing,
  - (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 potato or seed potato, vessel, vehicle, container, machinery, equipment, premises or other thing 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 potato or seed potato or other thing is being delivered or who is causing it to be delivered,
  - (xi) require of a person the ownership, identity and origin of a potato or seed potato, vessel, vehicle, container, equipment, machinery or other thing,
  - (xii) require a person in charge or control of a vessel, vehicle or container to refrain from moving it,
  - (xiii) carry out surveys or programmes as may be required by these Regulations,
  - (xv) mark or otherwise identify a potato or seed potato, vessel, vehicle, machinery, equipment or other thing or a sample taken under subparagraph (v).
- (2) If an authorised officer has reasonable cause to suspect that—
- (a) an offence is being or has been committed under these Regulations,
  - (b) a contravention of these Regulations is being or has been committed, or

- (c) evidence of an offence or contravention to which paragraph (a) or (b) relate may be, is or has been on a premises—

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

- (i) seize and detain, a potato or seed potato, vessel, vehicle, container, equipment, machinery or other thing, or
- (ii) dispose of, or require the owner or person in charge of or in possession of a potato or seed potato 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, a potato or seed potato affected with potato cyst nematodes) in a manner that the authorised officer sees fit.

(3) 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 10 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) Without prejudice to the generality of paragraph (1), a direction or requirement of an authorised officer may include conditions—

- (a) prohibiting, restricting or otherwise controlling the use, processing or movement of a potato or seed potato suspected of being affected with potato cyst nematodes, vessel, vehicle, container, equipment, machinery or other thing as may be specified by the authorised officer, or
- (b) requiring that the person to whom the direction is addressed to take the bio-security measures (including measures requiring the repair or erection of fences, boundaries or buildings) specified by the authorised officer.

(8) If a member of the Garda Síochána has reasonable grounds to suspect that a person has committed an offence under this Regulation, the member may without warrant arrest the person.

(9) If in the course of exercising any powers under these Regulations an authorised officer, officer of Customs and Excise or a member of the Garda Síochaná 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 apply, it may be seized and retained for use in evidence in criminal proceedings.

(10) Nothing in these Regulations operates to prejudice a power conferred by another enactment to search, or to seize or detain property, which may be exercised by a member of an Garda Síochaná or an officer of Customs and Excise.

#### *Search warrant*

10. (1) 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) that there is on a premises, vehicle, vessel or aircraft a potato or seed potato affected with potato cyst nematodes,
- (b) that there is on a premises, vehicle, vessel or aircraft a document, record or other thing relating to a potato or seed potato affected with potato cyst nematodes, or
- (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, vehicle, vessel or aircraft named in the warrant.

(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.

#### *Offences*

11. (1) A person who contravenes or causes or permits a contravention of Regulation 3, 5, 6(1), 6(2) and 7 commits an offence.

(2) A person who commits an offence under these Regulations is liable on summary conviction, to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 6 months or to both.

(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 were 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*

12. The European Communities (Potato Cyst Nematodes) Regulations 2010 (S.I. No. 320 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.)*

These Regulations provide measures for the control of potato cyst nematodes.

BAILE ÁTHA CLIATH  
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
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