



STATUTORY INSTRUMENTS

**S.I. No. 17 of 2008**

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EUROPEAN COMMUNITIES (AVIAN INFLUENZA) (CONTROL ON  
IMPORTS) REGULATIONS 2008

**(Prn. A8/0151)**

## EUROPEAN COMMUNITIES (AVIAN INFLUENZA) (CONTROL ON IMPORTS) REGULATIONS 2008

I, MARY COUGHLAN, 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 full effect to Commission Decision No. 2006/415/EC of 14 June 2006<sup>1</sup> as amended by Commission Decision No. 2007/731/EC of 13 November 2007<sup>2</sup>, Commission Decision No. 2007/770/EC of 28 November 2007<sup>3</sup>, Commission Decision No. 2007/816/EC of 10 December 2007<sup>4</sup>, Commission Decision 2007/844/EC<sup>5</sup> of 17 December 2007, Commission Decision 2007/878/EC<sup>6</sup> of 21 December 2007, Commission Decision 2007/885/EC<sup>7</sup> of 26 December 2007 and Commission Decision 2008/70/EC<sup>8</sup> of 22 January 2008, hereby make the following regulations—

*Citation*

1. These Regulations may be cited as the European Communities (Avian Influenza) (Control on imports) Regulations 2008.

*Interpretation*

2. (1) In these Regulations—

“authorized officer” means—

- (a) an authorized officer within the meaning of section 17A (inserted by the Diseases of Animals (Amendment) Act 2001 (No. 3 of 2001)) of the Diseases of Animals Act 1966,
- (b) a member of the Garda Síochána, or
- (c) an officer of Customs and Excise;

“Commission Decision” means Commission Decision No. 2006/415/EC of 14 June 2006 as amended by Commission Decision No. 2007/731/EC, Commission Decision No. 2007/770/EC of 28 November 2007, Commission Decision No. 2007/816/EC of 10 December 2007, Commission Decision 2007/844/EC<sup>5</sup> of 17 December 2007, Commission Decision 2007/878/EC<sup>6</sup> of 21 December 2007, Commission Decision 2007/885/EC<sup>7</sup> of 26 December 2007 and Commission Decision 2008/70/EC<sup>8</sup> of 22 January 2008.

<sup>1</sup>O.J. No. L 164 of 16.6.2006, p.51.

<sup>2</sup>O.J. No. L 295 of 14.11.2007, p.28.

<sup>3</sup>O.J. No. L 311 of 29.11.2007, p.45.

<sup>4</sup>O.J. No. L 312 of 12.12.2007, p.32.

<sup>5</sup>O.J. No. L 332 of 15.12.2007, p.101.

<sup>6</sup>O.J. No. L 344 of 28.12.2007, p.54.

<sup>7</sup>O.J. No. L 346 of 29.12.2007, p.23.

<sup>8</sup>O.J. No. L 18 of 23.1.2008, p.25.

*Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 8th February, 2008.*

“licence” means a licence under Regulation 3;

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

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

*Prohibition on import*

3. (1) Subject to paragraph (3), a person shall not bring into the State or cause or permit another person to bring into the State, either directly or indirectly, poultry, another captive bird, hatching eggs derived from poultry or other captive bird, a wild feathered game bird, fresh meat, a product or by-product derived from poultry, other captive bird or a wild feathered game bird, from the areas specified in the Annex to the Commission Decision.

(2) A person shall not have poultry, another captive bird, hatching eggs derived from poultry or other captive bird, a wild feathered game bird, fresh meat, a product or by-product derived from poultry, other captive bird or a wild feathered game bird that has been brought into the State in contravention of paragraph (1) in his or her possession or under his or her control.

(3) Notwithstanding paragraph (1) the following may be imported:—

- (a) live poultry and day-old chicks that conform to Article 6 of the Commission Decision, from the area specified in Part B of the Annex to the Commission Decision,
- (b) hatching eggs that conform to Article 7 (1) and (3) of the Commission Decision,
- (c) SPF-eggs that conform to Article 7(2) and (3) of the Commission Decision,
- (d) fresh meat, meat products, minced meat, meat preparations and mechanically separated meat that conform to Article 8 of the Commission Decision, or
- (e) animal by-products that conform to Article 9 of the Commission Decision.

*Functions of authorized officer*

4. (1) If an authorized officer has reasonable cause to suspect that—

- (a) poultry or another bird, carcass, the product or by-product of poultry or other bird or a vehicle or trailer used in connection with the transport of a poultry or other bird is present, has been present or may be present on a premises,

- (b) poultry or another bird, carcass or the product or by-product of poultry or other bird is or has been kept, processed, stored or otherwise dealt with on a premises,
- (c) equipment, plant or machinery used in connection with poultry or other bird, carcass or the product or by-product of poultry or other bird has been, is or may be on a premises,
- (d) avian influenza is or may be present on a premises, or
- (e) a document relating to a thing referred to in paragraph (a), (b), (c) or (d) is present, was present or may be present on a premises,

the authorized 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 poultry or another bird, a carcass, the product or by-product of poultry or other bird, a vehicle, vessel, container, equipment, machinery or other thing,
- (v) take, without payment, samples of poultry or other bird, a carcass, the product or by-product of poultry or other bird, or other thing 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 poultry or other bird, a carcass, the product or by-product of poultry or other bird, a 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 poultry or another bird, a carcass, the product or by-product of poultry or another bird, a 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 poultry or another bird, a carcass, the product or by-product of poultry or other bird 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 the poultry or other bird, carcass, the product or by-product of poultry or other bird, a 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 other investigations, or
- (xiv) mark or otherwise identify poultry or another bird, carcass, the product or by-product of poultry or another bird, a vessel, vehicle, machinery, equipment or other thing or a sample taken under subparagraph (v).

(2) If an authorized officer has reasonable cause to suspect that—

- (a) an offence is being or has been committed under these Regulations,
- (b) evidence of an offence or contravention to which paragraph (a) relates may be, is or has been on a premises

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

- (i) search a person, where the authorized officer considers it necessary,
- (ii) seize and detain, poultry or another bird, a carcass, the product or by-product of poultry or another bird, a vessel, vehicle, container, equipment, machinery or other thing, or
- (iii) dispose of, or require the owner or person in charge of or in possession of poultry or another bird, a carcass, the product or by-product of poultry or another bird or other thing 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 poultry or other bird, carcass or the product or by-product of poultry or other bird) in a manner that the authorized officer sees fit.

(3) An authorized 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 6 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 authorized officer may use reasonable force, if necessary, in exercise of his or her powers under this Regulation.

(5) An authorized officer, when exercising a power under this Regulation may be accompanied by other persons and may take with him or her 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 authorized 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 authorized officer may include conditions—

(a) prohibiting, restricting or otherwise controlling the use, processing or movement of poultry or another bird, a carcass, the product or by-product of poultry or another bird, a vessel, vehicle, container, equipment, machinery or other thing as may be specified by the authorized officer, or

(b) requiring that the person to whom the direction is addressed to take the bio-security measures specified by the authorized officer.

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

(9) If in the course of exercising any powers under these Regulations an authorized officer or a member of the Garda Síochána 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.

(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 Síochána or an officer of Customs and Excise.

*Assistance to an authorized officer*

5. A person who has a poultry or other bird, carcass, the product or by-product of a poultry or other bird, a vehicle, farm machinery, equipment or document relating to any thing to which this Regulation refers in his or her possession or under his or her control, the servant, agent or employee of the person shall give any assistance requested to an authorized officer or person who accompanies an authorized officer.

*Search warrant*

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

- (a) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found on a premises,
- (b) there is or was poultry or another bird, carcass, the product or by-product of poultry or another bird or equipment or other thing made used or adapted for use (including manufacture and transport) in connection with poultry or another bird, carcass or the product or by-product of poultry or another bird on a premises,
- (c) a document or other record related to a thing to which subparagraph (a) or (b) refers is or may be on a premises,

the judge may issue a search warrant.

(2) A search warrant under this Regulation shall be expressed and operate to authorise a named authorized officer, accompanied by such authorized officers or other persons as the named authorized 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 named in the warrant.

(3) If a premises is entered under a search warrant, an authorized officer so entering may exercise all or any of the powers conferred on an authorized officer under these Regulations.

*Obstruction etc.*

7. A person shall not—

- (a) obstruct or impede an authorized officer (or a person who accompanies an authorized officer) in the exercise of his or her powers under Regulation 4,
- (b) fail, without reasonable cause, to comply with a requirement or direction of an authorized officer under Regulation 4,
- (c) interfere or otherwise tamper with a mark or other identification applied set under Regulation 4(1)(xiv) or otherwise,
- (d) fail, without reasonable cause, to give assistance to an authorized officer in accordance with Regulation 5, or
- (e) in purporting to give information to an authorized officer for the performance of the officer's powers under Regulation 4—
  - (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.

*Forgery*

8. (1) A person shall not forge or utter knowing it to be forged—

(a) a licence, or

(b) a direction or requirement of an authorized officer under Regulation 4 (if the requirement or direction is in documentary form),

(hereafter in this Regulation referred to as a “forged document”).

(2) A person shall not alter with intent to defraud or deceive, or to utter knowing it to be so altered—

(a) a licence, or

(b) a direction or requirement of an inspector or authorized officer under Regulation 4 (if the requirement or direction is in documentary form),

(hereafter in this Regulation referred to as an “altered document”).

(3) A person shall not have, without lawful authority (the proof of which lies on him or her), in his or her possession or under his or her control a forged document or an altered document.

*Offences, etc.*

9. (1) A person who contravenes or aids or abets a contravention of—

(a) Regulation 3(1) or (2), 7 or 8,

(b) a licence, or

(c) a direction or requirement of an authorized officer under Regulation 4,

commits an offence and is liable—

(i) on summary conviction, to a fine not exceeding € 5,000, or to imprisonment for a term not exceeding 6 months, or to both, or

(ii) on conviction on indictment—

(I) in the case of a first offence, to a fine not exceeding €100,000, or to imprisonment for a term not exceeding 1 year, or to both, or

(II) in the case of a second or subsequent offence to a fine not exceeding €250,000, or to imprisonment for a term not exceeding 3 years, or to both.

(2) 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 offence and is liable to be proceeded against and punished as if he or she is guilty of the 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) A summary offence under these Regulations may be prosecuted by the Minister.

*Evidence on certificate*

10. (1) In proceedings for an offence consisting of a contravention of these Regulations, a certificate purporting to be signed by a person employed at a laboratory named in the certificate stating the capacity in which that person is so employed and stating any one or more of the following, namely—

- (a) that the person received a sample submitted to the laboratory,
- (b) that, for such period as is specified in the certificate, the person had in his or her custody a sample so submitted,
- (c) that the person gave to such other person as is specified in the certificate a sample so submitted, or
- (d) that the person carried out any laboratory examination for the purpose of detecting the presence, in a sample so submitted, of avian influenza disease, or that the sample was positive for avian influenza disease,

is, unless the contrary is shown, evidence of the matters stated in the certificate.

(2) A certificate purporting to be signed by an officer of the Minister and to certify that on a specific day or days or during the whole of a specified period—

- (a) a person was or was not the holder of licence, or
- (b) that a particular licence was subject to a particular condition or conditions,

is, without proof of the signature of the person purporting to sign the certificate or that he or she is an officer of the Minister, evidence, unless the contrary is shown, of the matters stated in the certificate.

(3) In any proceedings, evidence of a licence may be given by producing a copy of the licence which has endorsed on it a certificate purporting to be signed by an officer of the Minister stating that the copy is a true copy is, without proof of the signature of the person purporting to sign the certificate or that he or she

is an officer of the Minister, evidence, unless the contrary is shown, of the licence.

(4) In proceedings for an offence under these Regulations the court may, if it considers that the interests of justice so require, direct that oral evidence of the matters stated in a certificate under paragraph (1), (2) or (3) be given, and the court may for the purpose of receiving oral evidence adjourn the matter.

(5) In any proceedings, evidence of an act of the institutions of the European Community 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.

(6) Paragraph (5) 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).



GIVEN under my Official Seal,  
29 January 2008

MARY COUGHLAN  
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 Commission Decision Concerning import restrictions.

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ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR  
Le ceannach díreach ón  
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