



STATUTORY INSTRUMENTS.

S.I. No. 391 of 2009

EUROPEAN COMMUNITIES (PHYTOSANITARY MEASURES)
(ANOPLOPHORA CHINENSIS) REGULATIONS 2009

(Prn. A9/1348)

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ARRANGEMENT OF REGULATIONS

1. Citation
2. Interpretation
3. Harmful Organism
4. Specific Import Requirements
5. Infested and Buffer Zones
6. Appointment of Authorised Officers
7. Functions of Authorised Officers
8. Search Warrant
9. Disposal Notice
10. Obstruction
11. Offences

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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 Commission Decision 2008/840/EC of 7 November 2008¹, hereby make the following Regulations—

Citation

1. These Regulations may be cited as the European Communities (Phytosanitary Measures) (Anoplophora chinensis) Regulations 2009.

Interpretation

2. (1) In these Regulations—

“authorised officer” means—

- (a) a person appointed under Regulation 6,
- (b) an authorised officer within the meaning of the European Communities (Control of Organisms Harmful to Plants and Plant Products) Regulations 2004 (S.I. No. 894 of 2004),
- (c) a member of the Garda Síochána, or,
- (d) an officer of Customs and Excise;

“buffer zone” means an area with a radius of at least two kilometres beyond the boundary of the infested zone;

“Commission Decision” means Commission Decision 2008/840/EC of 7 November 2008;

“harmful organism” means *Anoplophora chinensis* (Forster);

“infested zone” means an area where the presence of the harmful organism is confirmed;

“Member State” means a State that is a member of the European Communities;

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

¹ O.J. No. L 300 of 11.11.2008, p.36

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 29th September, 2009.*

“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;

“specified plants” means plants for planting, other than seeds, of *Acer* spp., *Aesculus hippocastanum*, *Alnus* spp., *Betula* spp., *Carpinus* spp., *Citrus* spp., *Corylus* spp., *Cotoneaster* spp., *Fagus* spp., *Lagerstroemia* spp., *Malus* spp., *Platanus* spp., *Populus* spp., *Prunus* spp., *Pyrus* spp., *Salix* spp., and *Ulmus* spp.;

“third country” means a State that is not a member of the European Communities.

(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).

Specific Import Requirements

4. (1) A person shall not import specified plants from a third country where the harmful organism is known to be present unless—

- (a) the specified plants are accompanied by a certificate referred to in point (1) of section I of Annex I to the Commission Decision,
- (b) the specified plants are inspected in accordance with point (2) of section I of Annex I to the Commission Decision, on entry into the State, by an authorised officer, and
- (c) the specified plants are, following inspection under paragraph (b), found to be free of the harmful organism.

(2) A person shall not import specified plants from a demarcated area, established in accordance with Article 5 of the Commission Decision, within a Member State unless the specified plants meet the conditions set out in point (1) of section II of Annex I to the Commission Decision.

(3) A person shall not import specified plants from a Member State where the specified plants have originated in a third country where the harmful organism is known to be present unless the specified plants meet the conditions set out in point (2) of section II of Annex I to the Commission Decision.

Infested and buffer zones

5. (1) Following the confirmation of the presence of a harmful organism the Minister shall, by notice, establish around the area where the presence of the harmful organism is confirmed—

- (a) an infested zone, and
- (b) a buffer zone

(2) The Minister may, by notice, reduce the size of the buffer zone to reflect a more limited risk of the spread of the harmful organism.

(3) A zone established under this Regulation is deemed to be abolished on the expiry of four years after the last year of detection of a harmful organism in that zone.

(4) A person in possession or control of land within an infested zone, shall ensure that plants (including the roots) infested by or showing signs of infestation by the harmful organism, are felled and destroyed before 30 April each year.

Appointment of Authorised Officers

6. (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 purpose 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 appointing 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

7. (1) An authorised officer or a person employed by or acting on the authority of the Commission of the European Communities accompanied by an authorised officer may enter a premises within an infested zone or a buffer zone in order to carry out monitoring for the presence of the harmful organism as set out in point 2(b) of Annex II to the Commission Decision.

(2) An authorised officer or a person employed by or acting on the authority of the Commission of the European Communities accompanied by an authorised officer, if the authorised officer has reasonable cause to suspect that—

- (a) a harmful organism is present, has been present or may be present on a premises,
- (b) a harmful organism is or has been detected, stored or otherwise dealt with on a premises,
- (c) a document relating to a harmful organism is present, was present or may be present on a premises, or
- (d) an offence is being or has been committed under these Regulations,

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) search a person, where the authorised officer considers it necessary,
- (v) examine a plant, vehicle, vessel, container or other thing to which these Regulations apply,
- (vi) take, without payment, samples of a plant to which these Regulations apply 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,
- (vii) seize and detain (for so long as is necessary) the specified plants, a vehicle or a container,
- (viii) require the production of a document or thing relating to a harmful organism, the specified plants, a vehicle, vessel or container,
- (ix) retain a document or thing (for so long as is necessary),
- (x) dispose of, or require the owner or person in charge of or in possession of specified plants to deal with or dispose of them (or any

equipment, machinery, plant or other thing used in connection with, or that may have been in contact with the specified plants) in a manner that the authorised officer sees fit,

- (xi) give a direction to, or request information of, a person regarding a thing to which these Regulations apply or a premises as he or she considers necessary,
- (xii) require the name and address of a person and the name and address of any other relevant person including the person to whom a product to which these Regulations apply is being delivered or who is causing it to be delivered,
- (xiii) require of a person the ownership, identity and origin of specified plants,
- (xiv) make a record of a thing aforesaid or a process related to a thing aforesaid,
- (xv) mark or otherwise identify a plant or other thing or a specimen taken under subparagraph (vi), or
- (xvi) secure the premises or part of it for later inspection.

(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 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) relates is being or is likely to be destroyed or disposed of.

(4) An authorised officer may use reasonable force, if necessary, in 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 these Regulations 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 prohibiting, restricting or otherwise controlling the use, processing or movement of a plant or product as may be 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 these Regulations, the member may without warrant arrest the person.

Search Warrant

8. (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) 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 a harmful organism on a premises, or
- (c) a document or other record related to a thing to which subparagraph (a) refers is or may be on the premises,

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 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.

(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.

Disposal Notice

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

- (a) specified plants have been introduced, moved, held in possession or are to be exported from the State in contravention of these Regulations,
- (b) specified plants including any material in which the specified plants are packed is infested with the harmful organism or has been in contact with the harmful 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 specified plants a notice (in this Regulation referred to as a “Disposal Notice”) stating that opinion and directing that—

- (i) the specified plants 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 specified plants are located as the officer shall specify in the notice,

- (iii) the specified plants be treated, destroyed or disposed of in such manner as the officer shall specify in the notice, or
- (iv) the specified plants 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 specified plant 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 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 a plant or thing to which a disposal notice relates other than under and in accordance with, or

(b) after such appeal, deal with a plant or thing to which a disposal notice relates other than under and in accordance with 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 thing 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 plant or thing and sell or dispose of it in a manner as the authorised officer considers appropriate.

(13) Subject to paragraph (15), the proceeds of the sale or disposal of the plant or 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 plant or 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 thing.

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

Obstruction

10. 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 7(2) or 9, or
- (c) in purporting to give information required by an authorised officer for the performance of the officer's powers under Regulation 7—
 - (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
 - (ii) fail to disclose any material particular.

Offences

11. (1) A person who contravenes Regulation 3, 4, 5(4), 9(2), 9(5), 9(6)(c), 9(11) or 10 commits an offence and is liable on conviction to a fine not exceeding €5,000 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 such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be prosecuted 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.



GIVEN under my Official Seal,
17 September 2009.

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 transpose provisional emergency phytosanitary measures to prevent the introduction into and the spread within the Community of *Anoplophora chinensis* (Forster)

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
FOILSEACHÁIN RIALTAIS, AN RANNÓG POST-TRÁCHTA,
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