



STATUTORY INSTRUMENTS

S.I. No. 327 of 2008

EUROPEAN COMMUNITIES (AVIAN INFLUENZA) (CONTROL ON
IMPORTS FROM CROATIA AND SWITZERLAND) REGULATIONS
2008

(Prn. A8/1281)

EUROPEAN COMMUNITIES (AVIAN INFLUENZA) (CONTROL ON
IMPORTS FROM CROATIA AND SWITZERLAND) REGULATIONS
2008

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 full effect to Commission Decision No. 2008/555/EC of 26 June 2008¹, hereby make the following regulations—

Citation

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

Interpretation

2. (1) In these Regulations—

“authorised officer” means—

- (a) an authorised 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 No. 2008/555/EC of 26 June 2008;

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

“premises” includes land with or without buildings;

(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, hatching eggs, birds or their hatching eggs, meat, minced meat, meat preparations, mechanically separated meat of wild feathered game, raw pet food or unprocessed feed material containing any parts of wild feathered game or non-treated game trophies from a part of Croatia or Switzerland referred to in Article 1(1) of Commission Decision No. 2008/555/EC.

¹O.J. No. L 179 of 08.7.2006, p. 14.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 19th August, 2008.*

(2) Notwithstanding paragraph (1) a person may bring into the State a meat product that complies with Article 1(3) of the Commission Decision.

(3) A person shall not sell or supply anything brought into the State in contravention of paragraph (1).

(4) A person shall not have poultry, hatching eggs, birds or their hatching eggs, meat, minced meat, meat preparations, mechanically separated meat of wild feathered game, raw pet food, unprocessed feed material containing any parts of wild feathered game or non-treated game trophies from any birds which have been brought into the State in contravention of paragraph (1) in his or her possession or under his or her control.

Functions of authorised officer

4. (1) If an authorised 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 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 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, a 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 authorised officer has reasonable cause to suspect that—

- (a) an offence is being or has been committed under these Regulations, or
- (b) evidence of an offence or contravention to which paragraph (a) relates 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) 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 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 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 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 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 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 authorised officer, or
- (b) requiring that the person to whom the direction is addressed to take the bio-security measures 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.

(9) If in the course of exercising any powers under these Regulations an authorised 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 authorised officer

5. A person shall give any assistance requested to an authorised officer or person who accompanies an authorised officer.

Search warrant

6. (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 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 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 named in the warrant.

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

Offences, etc.

7. (1) A person who contravenes Regulation 3 or 5 or fails to comply with a requirement or direction of an authorised officer under Regulation 4 commits an offence and is liable on summary conviction to a fine not exceeding €5,000 or to a term of imprisonment not exceeding 6 months or both.

(2) In proceedings under these Regulations, it is not necessary for the prosecution to prove that the subject of the offence came from a part of Croatia or Switzerland referred to in Article 1(1) of the Commission Decision and, accordingly it is for the defendant to prove that the subject of the offence did not come from a part of Croatia or Switzerland referred to in Article 1(2) of the Commission Decision.

(3) 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.

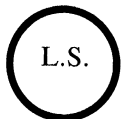
(4) If the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to the acts and defaults of a member in connection with the functions of management as if the member were a director or manager of the body corporate.

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

Revocation

8. The following are revoked—

- (a) the European Communities (Avian Influenza) (Control on Imports from Switzerland) Regulations 2006 (S.I. No 228 of 2006), and
- (b) the European Communities (Avian Influenza) (Control on Imports from Croatia) Regulations 2007 (S.I. No 78 of 2007).



GIVEN under my Official Seal,
31 July 2008

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.)

This Regulation gives effect to Commission Decision 2008/555/EC updating certain protective measures with regard to imports of avian products from Croatia and Switzerland

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CONTAE MHAIGH EO,
(Teil: 01 - 6476834/37 nó 1890 213434; Fax: 01 - 6476843 nó 094 - 9378964)
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