



STATUTORY INSTRUMENTS.

S.I. No. 424 of 2009

EUROPEAN COMMUNITIES (AGRICULTURE, FISHERIES AND
FOOD) (COMPLIANCE) REGULATIONS 2009

(Prn. A9/1476)

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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 certain acts of the institutions of the European Communities relating to the Agriculture, Fisheries and Food sectors, hereby make the following regulations:

1. These Regulations may be cited as the European Communities (Agriculture, Fisheries and Food) (Compliance) Regulations 2009.

2. In these Regulations—

“agricultural product” means—

- (a) an animal (including fish, crustaceans and molluscs), a carcass, an animal product or an animal by-product,
- (b) a plant, seed, a plant product or by-product,
- (c) food (including drink) or animal feed or an ingredient for food or animal feed,
- (d) a fertilizer or soil improver,

or a part or combination of those things;

“bio-security issue” means—

- (a) the risk of animal disease or plant disease,
- (b) the spread of animal disease or plant disease,
- (c) the presence of animal disease or plant disease,
- (d) the suspected or actual contamination of an agricultural product, vehicle, vessel, container, equipment, machinery or other thing or premises with a disease or substance harmful to man, an agricultural product or the environment;

“document” includes a map or a record maintained in non-legible form;

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

Notice of the making of this Statutory Instrument was published in “Iris Oifigiúil” of 27th October, 2009.

3. (1) These Regulations apply to the enforcement of Regulations made under section 3 of the European Communities Act 1972 (No. 27 of 1972) or to an act of the institutions of the European Communities to the extent that these Regulations are applied to those Regulations or the act or any of them.

(2) The Minister may apply these Regulations or any of them to Regulations made under section 3 of the European Communities Act 1972 (No. 27 of 1972) or to an act of the institutions of the European Communities.

4. (1) The Minister may, by instrument in writing, appoint such and so many persons or a class of persons as he or she thinks fit to be authorised officers for the purposes of some or all of the functions of an authorised officer as may be specified in the instrument.

(2) The Minister may terminate the appointment of an authorised officer appointed by him or her and the Minister may terminate an appointment under paragraph (1), 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 reappointing as an authorised officer a person to whom paragraph (3) 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.

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

(a) an agricultural product or a vessel, vehicle or trailer used in connection with an agricultural product is present, has been present or may be present on a premises,

(b) an agricultural product is or has been kept, processed, stored or otherwise dealt with on a premises,

(c) equipment, plant or machinery used in connection with an agricultural product has been, is or may be on a premises,

- (d) an agricultural product or a vessel, vehicle or trailer, equipment, plant or machinery used in connection with an agricultural product has been held in possession or control, imported, exported, processed, stored or otherwise dealt with in contravention of a Regulation of an institution of the European Communities,
- (e) a bio-security issue may exist,
- (f) a premises is the subject of an application for licensing, registration, authorisation or approval, is required to be licensed, registered, authorised or approved or is ancillary to a premises registered or approved, subject to an application for a licence, registration, authorisation or approval or required to be registered or approved by virtue of Regulations made under the European Communities Act 1972 or a Regulation of an institution of the European Communities, or
- (g) a document relating to a thing referred to in paragraph (a), (b), (c) or (e) 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 an agricultural product, vehicle, vessel, container, equipment, machinery or other thing,
- (v) take, without payment, samples of an agricultural product 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 an agricultural product, 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 an agricultural product, 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 an agricultural product 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 an agricultural product, 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 an act of the institutions of the European Communities,
 - (xiv) set equipment to trap or restrain an animal,
 - (xv) mark or otherwise identify an agricultural product, 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 Regulations made under the European Communities Act 1972 to which these Regulations apply,
 - (b) a contravention of an act of the institutions of the European Communities 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 subsection (1)—

- (i) search a person, where the authorised officer considers it necessary,
 - (ii) seize and detain, an agricultural product, 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 an agricultural product 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 agricultural product) 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 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 section.

(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 subsection (1), a direction or requirement of an authorised officer may include conditions—

(a) prohibiting, restricting or otherwise controlling the use, processing or movement of an agricultural product, 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 Act, the member may without warrant arrest the person.

(9) If in the course of exercising any powers under Regulations to which these Regulations apply an authorised officer, officer of Customs and Excise 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 Regulations to which 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 Síochána or an officer of Customs and Excise.

(11) Nothing in section 17 of the Industrial and Provident Societies Act 1893 prevents an authorised officer from exercising a power conferred on him or her by this Act.

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) an offence is being or has been committed under Regulations made under the European Communities Act 1972 to which these Regulations apply,
- (b) a contravention of an act of the institutions of the European Communities is being or has been committed,
- (c) evidence of an offence or contravention or intended contravention to which paragraph (a) or (b) relate may be, is or has been on a premises,
- (d) there is or was an agricultural product or equipment or other thing made used or adapted for use (including manufacture and transport) in connection with an agricultural product, or
- (e) a document or other record related to a thing to which subparagraph (a), (b), (c) or (d) 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.

7. A person who—

- (a) obstructs or impedes an authorised officer in the exercise of his or her powers under Regulation 5,
- (b) fails, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 5, or
- (c) in purporting to give information to an authorised officer for the performance of the officer's powers under Regulation 5—
 - (i) makes a statement that he or she knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or
 - (ii) fails to disclose a material particular,

commits an offence.

8. (1) 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.

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

(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 was guilty of the offence.

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



GIVEN under my Official Seal,
20 October 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)

The Regulations provide for the appointment of authorised officers and for enforcement powers in respect of certain EC measures to which the Regulations are applied in the Agricultural sector.

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