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European Communities (Avian Influenza) (Precautionary Measures)

Regulations 2006

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European Communities (Avian Influenza) (Precautionary Measures) Regulations 2006

I, Mary Coughlan, Minister for Agriculture 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 further effect to Commission Decision 2005/734/EC of 19 October 2005¹ as amended by Commission Decision 2005/745/EC of 21 October 2005² and Commission Decision 2005/855/EC of 30 November 2005³, hereby make the following regulations:

Citation.

1. These Regulations may be cited as the European Communities (Avian Influenza) (Precautionary Measures) Regulations 2006.

Interpretation.

2. (1) In these Regulations -

“authorised officer” means 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 (No. 6 of 1966);

“avian influenza” means highly pathogenic avian influenza caused by Influenza A virus subtype H5N1;

¹ O.J. No. L274, 20.10.2005, p. 105.

² O.J. No. L279, 22.10.2005, p. 79.

³ O.J. No. L316, 2.12.2005, p. 21.

“Commission Decision” means Commission Decision 2005/734/EC of 19 October 2005¹ as amended by Commission Decision 2005/745/EC of 21 October 2005² and Commission Decision 2005/855/EC of 30 November 2005³;

“Minister” means Minister for Agriculture and Food;

“other captive bird” means any bird other than poultry that is kept in captivity for any reason other than those referred to in the definition of poultry including those that are kept for shows, races, exhibitions, competitions, breeding or selling;

“poultry” means all birds that are reared or kept in captivity for the production of meat or eggs for consumption, the production of other products, for restocking supplies of game birds or for the purposes of any breeding programme for the production of these categories of birds.

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

Biosecurity measures.

3. (1) The Minister may, by notice, having regard to the risk of the transmission of avian influenza from birds living in the wild to poultry and other captive birds, taking into

account the criteria and risk factors set out in Annex 1 to the Commission Decision, declare an area as a high risk area.

(2) A person in possession of or in control of poultry or any other captive bird in an area identified as a high risk area shall ensure that -

- (a) poultry or any other captive bird are kept indoors in a place that is inaccessible to wild birds in particular waterfowl,
- (b) domestic ducks and geese are separated from other poultry and other captive birds,
- (c) outdoor water reservoirs required for animal welfare reasons are sufficiently screened against wild waterfowl,
- (d) the poultry or any other captive bird are not provided with water from surface water reservoirs accessed by wild birds unless such water is treated to ensure inactivation of possible virus,
- (e) birds of the orders of *Anseriformes* (including ducks, geese and swans) and *Charadriiformes* (including gulls, murre, terns, avocets, puffins, woodcock, oystercatchers, sandpipers, plovers, surfbirds, snipes and skimmers) shall not be used as decoys during bird hunting unless for the purpose of attracting wild birds intended for sampling in the

framework of the surveillance programme set up in the Commission Decision 2005/732/EC.⁴

(3) Notwithstanding paragraph (2)(a), the Minister may by notice authorise the keeping of poultry or other captive birds in the open air, if they are provided with food and water indoors or under a shelter, which sufficiently discourages the landing of wild birds and prevents contact by wild birds with the feed or water intended for poultry or any other captive bird and if the provisions of paragraphs (2)(b), (2)(c) and (2)(d) are satisfied.

(4) The Minister may by notice amend or withdraw a notice under this Regulation.

(5) A notice under this Regulation shall be published in the *Iris Oifigiúil* and in at least one newspaper published in the State and circulating in the area declared as a high risk area and by any other means as the Minister considers appropriate.

(6) A copy of the *Iris Oifigiúil* purporting to contain a notice under this Regulation may be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the notice.

(7) A copy of a notice under this Regulation, which has endorsed on it a certificate purporting to be signed by an officer of the Minister (authorised in that behalf by the Minister) stating that the copy is a true copy of the notice may, without proof of signature

⁴ O.J. No. L274, 20.10.2005, p. 95

of that officer, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the notice.

(8) The Minister may authorise in writing one or more of his or her officers to issue a notice under this Regulation on his or her behalf.

Powers of authorised officer.

4. An authorised officer may exercise all or any of the powers conferred on an authorised officer under section 17A of the Diseases of Animals Act 1966 for the purposes of enforcing these Regulations and the Commission Decision and any reference in that section to -

- (a) poultry includes a reference to other captive birds, and
- (b) disease includes a reference to avian influenza.

Bio-security notice.

5. (1) Without prejudice to Regulation 3 or 4, where an authorised officer is of the opinion that -

- (a) there is a failure to comply with these Regulations,

- (b) there is a risk of an outbreak or spread of avian influenza, or
- (c) measures should be taken to prevent the outbreak of avian influenza or to ameliorate the effects of avian influenza,

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 poultry or other captive birds a notice (in this Regulation referred to as a “bio-security notice”) stating that opinion and directing that -

- (i) the poultry or other captive birds be moved to and kept in such premises as are specified in the notice,
- (ii) such alterations be made to the premises in which the poultry or other captive birds are located as are specified in the notice,
- (iii) the poultry or other captive birds be slaughtered or otherwise disposed of in such manner as specified in the notice,
- (iv) the poultry or other captive birds be housed as specified in the notice,
- (v) measures be taken to secure the effective isolation of the poultry or other captive birds or poultry or other captive birds of a particular class or description,

- (vi) measures be taken to restrict access of the poultry or other captive birds or poultry or other captive birds of a particular class or description to areas that may occasion a risk of an outbreak or spread of avian influenza, or
- (vii) disinfection and cleansing procedures specified in the notice shall be established and adhered to.

(2) A person shall comply with a bio-security notice or a requirement of a bio-security notice unless and until the notice is annulled under paragraph (10).

(3) A requirement contained in a bio-security notice shall specify a time limit within which the notice is to be complied with.

(4) A requirement specified in a bio-security notice (in this paragraph referred to as the “earlier bio-security notice”) may be amended or withdrawn by a further notice in writing and the earlier bio-security notice shall have effect subject to such amendment or withdrawal.

(5) A bio-security notice, whether amended under paragraph (4) or not, may require the owner or person in charge of poultry or other captive birds to choose between one or more of the requirements specified in the bio-security notice and that person shall comply with the alternative requirement that he or she chooses.

- (6) (a) A bio-security notice shall, subject to subparagraph (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 bio-security notice relates to a premises, by delivering it to any 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 bio-security 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 by using the words the owner or, as the case may require, the occupier.

(c) A person shall not at any time within 6 months after a bio-security 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) is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body is deemed to be ordinarily resident at its principal office or place of business.

(7) A person, aggrieved by a bio-security notice, may, within 7 days of service of the bio-security notice, appeal to the judge of the District Court in whose District the person carries on business (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 bio-security notice or any term of the bio-security notice is unreasonable, shall be served on the Minister at least 48 hours prior to the hearing of the appeal and a copy of it shall be lodged with the appropriate District Court Clerk.

(10) On the hearing of an appeal, the Court may confirm, with or without modification, or annul a bio-security notice.

(11) A person, including a person on whom a bio-security notice is served, shall not -

(a) pending the determination of an appeal, deal with poultry or other captive birds to which a bio-security notice relates other than under and in accordance with the notice, or

(b) after such appeal, deal with poultry or other captive birds to which a bio-security notice or bio-security notice as modified relates.

(12) If -

(a) a person, by act or omission, fails to comply, whether within the time specified therein or otherwise, with a bio-security notice (including a bio-security notice modified in accordance with paragraph (10)), or

(b) an authorised officer has reasonable cause to suspect -

(i) that a bio-security notice (including a bio-security notice modified in accordance with paragraph (10)) is not or will not be complied with, or

- (ii) pending the determination of an appeal, that poultry or other captive birds to which a bio-security notice relates will be dealt with other than in accordance with paragraph (11),

the authorised officer or another authorised officer may seize and detain the poultry or other captive bird to which the bio-security notice relates and sell or dispose of the poultry or other captive bird in a manner (including slaughter) as he or she considers appropriate.

(13) Subject to paragraph (15), the proceeds of the sale or disposal of poultry or other captive bird under paragraph (12) shall be paid to the owner as soon as may be after the sale or disposal thereof 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 poultry or other captive birds under this Regulation is recoverable by the Minister -

- (a) as a simple contract debt in a court of competent jurisdiction, or
- (b) by deducting the costs from any monies otherwise due to the person by the Minister.

(15) The costs of any action required by a bio-security notice shall be borne by the owner of poultry or other captive birds to which the notice relates.

Offences.

6. (1) A person who fails to comply with Regulation 3 or 5(2) commits an offence and is liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 3 months, or to both.

(2) A person who contravenes Regulation 5(6)(c) commits an offence and is liable on summary conviction to a fine not exceeding €500.

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

(4) If an offence under these Regulations has been committed by a body corporate and it is proved to have been so committed with the consent or connivance of or to be attributable to any neglect on the part of any 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 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 committed the first-mentioned 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 such a member were a director or manager of the body corporate.

GIVEN under my Official Seal,

13th March 2006.

Minister for Agriculture and Food.

EXPLANATORY NOTE.

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations transpose the measures set down in Commission Decision 2005/734/EC as amended and provide for the establishment of an area as a high risk area and the biosecurity measures to be applied therein.