

- First Hit Word

S.I. No. 362/1992 — European Communities (Live Poultry and Hatching Eggs) Regulations, 1992.

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I, JOE WALSH, 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) and for the purpose of giving effect to Council Directive No. 90/539/EEC⁽¹⁾ of 15 October 1990, hereby make the following Regulations:—

⁽¹⁾ O.J. No. L303/6, 31.10.90.

1. (1) These Regulations may be cited as the European Communities (Live Poultry and Hatching Eggs) Regulations, 1992.

(2) These Regulations shall come into operation on the first day of January, 1993.

2. (1) These Regulations shall have effect for the purposes of the export of live poultry and hatching eggs to another Member State and "export" and cognate words shall be construed accordingly.

(2) These Regulations shall not apply to poultry for exhibitions, show or contests.

3. (1) In these Regulations—

"authorised officer" means a person authorised in writing by the Minister to exercise for the purposes of these Regulations and the Council Directive the powers conferred on an authorised officer by these Regulations;

"the Council Directive" means Council Directive No. 90/539/EEC of 15 October 1990;

"export" has the meaning assigned to it by Regulation 2;

"Member State" means a Member State of the European Economic Community;

"the Minister" means the Minister for Agriculture and Food;

"official veterinarian" means an authorised officer who is a veterinary surgeon.

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

(3) (*a*) In these Regulations a reference to a Regulation is to a Regulation of these Regulations, unless it appears that reference to some other enactment is intended.

(*b*) In these Regulations a reference to a paragraph or subparagraph is to the paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that reference to some other provision is intended.

4. (1) A person shall not export poultry or hatching eggs unless they—

(*a*) come from establishments which—

(i) have been approved by the Minister in accordance with Regulation 5 and such approval has not been suspended under Regulation 6 or is not for the time being revoked under Regulation 7, and

(ii) otherwise comply with the provisions of the Council Directive;

(*b*) comply with the provisions of the Council Directive;

(*c*) are accompanied by a health certificate, duly completed, in the appropriate form as specified in Annex IV to the Council Directive and signed by an official veterinarian;

(*d*) are transported, stored, packaged and kept in accordance with the provisions of the Council Directive.

(2) Notwithstanding the provisions of subparagraph (1) (*a*), a person shall not export slaughter poultry or poultry intended for re-stocking supplies of game unless they come from a holding which complies with the provisions of the Council Directive and, in

particular, Article 10 thereof.

(3) Notwithstanding the provisions of subparagraphs (1) (a) and (d), a person shall not export poultry or hatching eggs comprising fewer than 20 units unless, at the time of consignment, they come from a flock which complies with the terms of the Council Directive and, in particular, Article 11 (2) thereof.

5. (1) The Minister may, for the purposes of the Council Directive, grant approval to an establishment in respect of which he is satisfied that—

(a) the conditions as regards facilities and operation set out in Chapter II of Annex II to the Council Directive are complied with,

(b) a disease surveillance programme, taking into account the provisions of Chapter III of Annex II to the Council Directive, is being applied and adhered to,

(c) it contains only poultry,

(d) it provides every facility for the carrying out of the functions of authorised officers under Regulation 9.

(2) When the Minister approves of an establishment in accordance with paragraph (1), he shall allocate a serial number to the establishment and shall notify the owner or person in charge of the establishment in writing of the approval and of the serial number.

(3) The Minister may attach conditions to an approval under this Regulation at the time of the grant of the approval or subsequently and may amend or revoke a condition attached to the approval and shall notify the owner or person in charge of the establishment concerned in writing of the conditions, amendment or revocation concerned.

(4) The Minister may, if he is not satisfied that the relevant provisions of the Council Directive are being or will be complied with in relation to an establishment, refuse to approve of the establishment under this Regulation and shall notify the owner or person in charge of the establishment in writing of the refusal.

(5) The Minister shall not—

(a) refuse to approve of an establishment under this Regulation, or

(b) attach a condition to an approval under this Regulation or amend or revoke such a condition, without—

(i) notifying the holder of, or applicant for, the approval of his intention to refuse the application, or attach, amend or revoke the

condition, as the case may be,

(ii) specifying his reasons for the refusal, or the attaching, amendment or revocation of the condition, or

(iii) affording the holder of, or applicant for, the approval an opportunity of making representations or having representations made on his behalf to the Minister in relation to the proposed refusal or the attaching, amendment or revocation of the condition, as the case may be, within 14 days of the receipt by that person of the notification referred to in subparagraph (i) and having had regard to any such representations.

6. (1) The Minister shall suspend the approval granted to an establishment in accordance with Regulation 5—

(*a*) where he is satisfied that the conditions laid down in Chapter II of Annex II to the Council Directive are no longer met,

(*b*) where, without prejudice to the provisions of paragraph (*a*) of Regulation 7, avian influenza or Newcastle disease is suspected at the establishment,

(*c*) if the results of surveillance carried out in accordance with the conditions laid down in Chapters II and III of Annex II to the Council Directive for infection by *Salmonella pullorum*, *Salmonella gallinarum*, *Salmonella arizonae*, *Mycoplasma gallisepticum* or *Mycoplasma meleagridis* give cause to suspect infection, until such time as any tests which the official veterinarian may reasonably require, carry out or have carried out confirm to his satisfaction the absence of such infection,

(*d*) until completion of the appropriate measures required by an official veterinarian in a notice served on the owner or person in control of the establishment, where he forms an opinion that the establishment does not conform to the requirements of Chapter I, paragraph 1 (*a*), (*b*) or (*c*) of Annex II to the Council Directive.

(2) A requirement contained in a notice referred to in subparagraph (1) (*d*)—

(*a*) may specify a time limit within which it is to be complied with,

(*b*) may be modified or withdrawn in a further such notice and in that event the earlier notice shall have effect subject to such modification or withdrawal.

(3) A notice referred to in subparagraph (1) (*d*) or in paragraph (*c*) of Regulation 7 may be served on the owner or person in control of the establishment as the case may be by delivery of it by hand, or by sending it by prepaid registered post to or by leaving it at the address of the establishment approved in accordance with Regulation 5.

7. The Minister shall withdraw the approval granted to an establishment in accordance

with Article 5—

- (a) where avian influenza or Newcastle disease occurs at the establishment;
- (b) where tests referred to in subparagraph (1) (c) of Regulation 6 confirm, to the satisfaction of the official veterinarian, the presence of infection by *Salmonella pullorum*, *Salmonella gallinarum*, *Salmonella arizonae*, *Mycoplasma gallisepticum* or *Mycoplasma meleagridis*;
- (c) where a requirement in a notice served in accordance with subparagraph (1) (d) of Regulation 6 has not been complied with to the satisfaction of the official veterinarian within a time limit specified under subparagraph (2) (a) of that Regulation and a notice (in this paragraph referred to as "the second notice") containing that requirement and specifying a further time limit has been served on the owner or person in control of the establishment, on the expiry of that further time limit in the event of the said requirement not being complied with in accordance with the second notice.

8. The Minister may restore approval—

- (a) if approval has been withdrawn in accordance with paragraph (a) of Regulation 7—

following a period of 21 days after cleansing and disinfection of the establishment if sanitary slaughter has been carried out to the satisfaction of the official veterinarian;

- (b) if approval has been withdrawn because of infection by *Salmonella pullorum*, *Salmonella gallinarum* or *Salmonella arizonae*—

when any tests which the official veterinarian may reasonably require, have been carried out, including two tests performed with an interval of at least 21 days on the establishment and after disinfection following sanitary slaughter of the infected flock, confirm the absence of the infection to the satisfaction of the official veterinarian;

- (c) if approval has been withdrawn because of infection by *Mycoplasma gallisepticum* or *Mycoplasma meleagridis*—

when any tests which the official veterinarian may reasonably require, have been carried out, including two tests performed on the entire flock with an interval of at least 60 days, confirm the absence of the infection to the satisfaction of the official veterinarian.

9. (1) An authorised officer, on production of the officer's authorisation if so required by any person affected, may, for the purposes of these Regulations and the Council Directive—

- (a) at all reasonable times, enter an approved establishment or any other premises or place, including any land, vehicle, wagon, vessel, aircraft or other means of transport, where he reasonably suspects that there are or have been poultry or hatching eggs intended for export or any establishment in respect of which an application for an approval under

Regulation 5 has been made to the Minister,

- (*b*) there or at any other place, carry out or have carried out such examinations, tests, checks and inspections of the premises or place and any equipment, machinery or plant thereat and any article, substance or liquid found thereat as he reasonably considers necessary or expedient for the purposes of his functions under these Regulations and the Council Directive,
- (*c*) examine and check the general state of health of or take samples from any poultry on or at the premises or place,
- (*d*) take, without payment, such samples of any poultry, eggs, article, substance or liquid at the premises or place as he may reasonably require for the purposes of such functions and carry out or have carried out on the samples such examinations, checks and inspections as he considers necessary or expedient for the purposes of such functions,
- (*e*) require any person at the premises or place and the owner or person in charge thereof and any person employed in connection therewith to give to him such information and to produce to him such books, documents and other records within the power or procurement of the person as he may reasonably require for the purposes of such functions,
- (*f*) examine and take copies of, or extracts from, any such records as aforesaid,
- (*g*) seize and detain any poultry or eggs which he reasonably believes to have been produced in contravention of these Regulations or the Council Directive.

(2) A person who obstructs or otherwise interferes with an authorised officer in the performance of his functions under this Regulation or who, in purported compliance with a requirement under paragraph (1) (*e*), gives information to an authorised officer that he knows to be false or misleading in a material respect shall be guilty of an offence.

(3) For the purposes of this Regulation—

"poultry" includes poultry carcasses or parts thereof;

"eggs" includes eggs in liquid form.

10. (1) The Minister may where he believes there is a risk to public or animal health—

- (*a*) with the consent of the owner of the poultry or eggs seized or detained in accordance with subparagraph (1) (*g*) of Regulation 9, destroy or cause to be destroyed the poultry or eggs in such manner as the Minister may direct, or

(*b*) make application to the District Court for destruction of the poultry or eggs in accordance with the provisions of this Regulation.

(2) (*a*) Notice of an application made pursuant to paragraph (1) shall be served on the owner or person in charge for the time being of the poultry or eggs to which paragraph (1) relates at least seven days prior to the hearing of the application.

(*b*) The owner or person in charge of the poultry or eggs to which paragraph (1) relates shall be entitled to be heard and to adduce evidence at the hearing of the application brought under paragraph (1).

(3) (*a*) Where an application is made to the District Court under paragraph (1) that Court, if it is satisfied in relation to the poultry or eggs that it constitutes a risk to public or animal health and that it has been produced in contravention of these Regulations or the Council Directive, shall order the destruction of such poultry or eggs within the time and in such manner as specified in such order.

(*b*) Either party aggrieved by the order made by the District Court on determining an application under this Regulation may, not later than the expiration of the period of seven days beginning on the date of the order, appeal therefrom to the Judge of the Circuit Court within whose circuit is situate the courthouse in which the decision of the District Court was given, and the decision of the Judge on such appeal shall be final.

(*c*) Notice of an appeal made pursuant to subparagraph (*b*) of this paragraph shall be served on the other party at least seven days prior to the hearing of the appeal by the Circuit Court.

(*d*) The notice of appeal shall contain a statement of the grounds upon which it is alleged that the order or any of the terms thereof are not justified.

(*e*) A copy of the notice of appeal shall be lodged with the Circuit Court Clerk at least seven days prior to the hearing of the appeal.

(*f*) The other party shall, as well as the appellant, be entitled to be heard and to adduce evidence at the hearing of the appeal brought under subparagraph (*b*).

(4) On the hearing of an appeal under paragraph (3) the Judge of the Circuit Court may, at his discretion, confirm, with or without modification, or annul the order of the District Court.

(5) (*a*) Where an order is made under this Regulation, a person shall not sell, move, dispose of or otherwise interfere or deal with the poultry or eggs other than in accordance with that order.

(*b*) In the event of an appeal, pursuant to paragraph (3), no person appealing shall sell, move, dispose of or otherwise interfere or deal with the poultry or eggs concerned pending the determination of the appeal otherwise than in accordance with the consent in writing of an authorised officer.

(c) Where the terms of an order made under this Regulation are confirmed with or without modification by the Judge of the Circuit Court hearing the appeal made under paragraph (3), no person, including the person who made the appeal, shall sell, move, dispose of or otherwise interfere or deal with the poultry or eggs concerned other than in accordance with such order as confirmed.

(6) Where an order made under paragraph (3) or (5) requires the poultry or eggs to which it relates to be disposed of by an authorised officer or where the order requires or indicates that the poultry or eggs be disposed of at the expense of the owner, or where the consent of the owner has been obtained to destroy such poultry or eggs, the cost of destruction and disposal shall be recoverable by the Minister as a simple contract debt in any court of competent jurisdiction from the person who was the owner of the poultry or eggs at the time the order was made or consent was obtained.

(7) (a) In this Regulation "District Court" means the Judge of the District Court having jurisdiction in the District Court District where the poultry or eggs are situated or the Judge of the District Court having jurisdiction in the District Court District where the owner or person in charge of the poultry or eggs resides or carries on business.

(b) For the purposes of subparagraph (a), the poultry or eggs shall be deemed to be situated within a District Court District if it is situated on a farm or premises which lies wholly or partly within such District.

11. (1) A person who contravenes a provision of these Regulations shall be guilty of an offence.

(2) A person guilty of an offence under these Regulations shall be liable on summary conviction to a fine not exceeding £1,000 or to imprisonment for a term not exceeding 12 months or to both.

(3) Where an offence under these Regulations has been committed by a body corporate and is proved to have been so committed with the consent or connivance of or be attributable to any neglect on the part of a person, being a director, manager, secretary or other officer of the body corporate or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against as if he were guilty of the first-mentioned offence.

12. An offence under these Regulations may be prosecuted by the Minister.

13. (1) (a) There shall be charged by the Minister in respect of an approval under Regulation 5 such fee as the Minister with the consent of the Minister for Finance, may determine.

(b) A fee charged under this Regulation shall be payable by the owner or person in charge of the establishment to which the approval concerned relates and the Minister may refuse to give an approval until the fee under

this Regulation in respect thereof has been paid.

(2) Fees under this Regulation shall be collected and taken in such manner as the Minister for Finance directs and shall be paid into or disposed of for the benefit of the Exchequer in accordance with the directions of the Minister for Finance.

(3) A fee payable under this Regulation may be recovered by the Minister from the person by whom it is payable as a simple contract debt in any court of competent jurisdiction.

(4) A fee charged under this Regulation shall not exceed an amount equal to the costs, estimated by the Minister, incurred in relation to the approval concerned and the performance of functions under the Regulations in relation to the establishment concerned by authorised officers for the purposes of the approval.

(5) The Public Offices Fees Act, 1879, shall not apply in respect of fees under this Regulation.

14. The powers conferred by Regulation 11 of the Food Hygiene Regulations, 1950 (S.I. No. 205 of 1950), shall not be exercised on or in respect of premises which for the time being stand approved of under Regulation 5 and neither Regulation 25 nor Part IV of those Regulations shall apply in respect of such premises.

15. These Regulations are in addition to and not in substitution for the Poultry Hatcheries Act, 1947 (No. 49 of 1947) and the Fowl Pest Order, 1950 (S.I. No. 15 of 1950).

GIVEN under my Official Seal, this 30th day of November, 1992.

JOE WALSH,

Minister for Agriculture and Food.

EXPLANATORY NOTE.

These Regulations implement EC Council Directive (90/539/EEC) of 15th October, 1990 on animal health conditions governing intra-Community trade in, and imports from third countries of, poultry and hatching eggs.

They also provide for: (a) approval of establishments for the purpose of these Regulations; (b) approval of authorised officers to enforce the Regulations and (c) the

prosecution of offences.

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