

STATUTORY INSTRUMENTS

S.I. NO. 678 of 2005

European Communities (Avian Influenza) (Precautionary Measures) Regulations Order, 2005

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S.I. No. 678 of 2005

European Communities (Avian Influenza) (Precautionary Measures) Regulations 2005

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, for the purpose of giving effect to Commission Decision 2005/734/EC of 19 October 2005¹ as amended by Commission Decision 2005/745/EC of 21 October 2005², hereby make the following regulations-

Citation

1. These Regulations may be cited as the European Communities (Avian Influenza) (Precautionary measures) Regulations 2005.

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);

“Commission Decision” means Commission Decision 2005/734/EC of 19 October 2005 as amended by Commission Decision 2005/745/EC of 21 October 2005;

“Minister” means the Minister for Agriculture and Food;

“poultry” means-

- (a) birds reared or kept in captivity for the production of meat, eggs or other commercial products, for restocking supplies of game or for breeding these types bird, or
- (b) other captive birds kept in the course of business or for sporting purposes.

“premises” includes any land (with or without buildings), vehicle, ship or other vessel, aircraft, railway wagon or other means of transport or any container used in transport.

¹ O.J. No. L 274 of 20.10.2005, p. 105

² O.J. No. L 279 of 22.10.2005, p.79.

- (2) In these Regulations a reference to a Regulation is to a Regulation of these Regulations and a reference to a paragraph or sub-paragraph is a reference to a paragraph or sub-paragraph of the provision in which the reference occurs unless reference to some other provision is intended.

Records

- 3.(1) The owner or person in charge of poultry shall maintain, on a daily basis, a record of -
- (a) all mortalities that occur in the flock or on the premises,
 - (b) the daily production of eggs in the flock, and
 - (c) the intake of food and water by the flock.
- (2) The Minister may determine the form of the record to be maintained under paragraph (1) and where he or she so determines, it shall be maintained in that form.

Maintenance of records

4. A record made under Regulation 3 shall be maintained for 6 months and made available on request to an authorised officer.

Notification

5. If the owner or person in charge of poultry, having regard to Annex II to the Commission Decision, becomes aware of unusual or unexplained circumstances or should reasonably be aware of those circumstances, in particular –
- (a) increased mortalities among his or her poultry,
 - (b) a drop in egg production,
 - (c) a decrease in the intake of feed or water among the poultry, or
 - (d) a clinical sign or lesion suggesting that a carcass may be infected with avian influenza,
- he or she shall immediately notify the veterinary surgeon having clinical charge of the poultry.

Licence

- 6.(1) A person shall not engage in the collection of poultry for markets, shows, exhibitions or cultural events other than under and in accordance with a licence.

- (2) The Minister may grant a licence, attach conditions to a licence, vary a condition, revoke a licence or refuse an application.
- (3) An application for a licence shall be in a form that the Minister may determine and contain the information that the Minister may require.
- (4) Without prejudice to the generality of paragraph (2), the Minister may refuse an application or revoke a licence if, in the opinion of the Minister-
 - (a) the applicant or person to whom a licence is granted has committed an offence, whether he or she has been convicted, under an enactment that relates to human or animal health or the environment,
 - (b) the applicant or person to whom a licence has granted has failed to comply with a condition of a licence,
 - (c) in relation to an application, information requested has not been furnished or information that is misleading in a material respect has been furnished,
 - (d) it is necessary, incidental, supplementary or consequential to prevent the risk of or spread of disease,
 - (e) it is necessary, incidental, supplementary or consequential to eradicate disease,
 - (f) it is necessary , incidental, supplementary or consequential to an act of the institutions of the European Community, or
 - (g) the applicant or person to whom a licence is granted is not a fit and proper person to hold a licence.
- (5) Other than in the case of paragraph (4) (d), (e), (f) or (g), if the Minister proposes to refuse an application or revoke a licence, he or she shall-
 - (a) notify the applicant or holder of the licence of the proposal and the reasons therefor, and that he or she may make representations to the Minister within 14 days of the notification,
 - (b) consider a representation duly made before deciding whether to proceed with, modify or annul the proposal, and
 - (c) notify the applicant or holder of the licence of the decision and the reasons therefor.
- (6) If the Minister is of the opinion that it is necessary, incidental, supplementary or consequential to prevent the risk of or spread of disease or to eradicate disease or is necessary, incidental, supplementary or consequential to an act of the

institutions of the European Community, he or she may refuse an application or revoke a licence under paragraph (7).

(7) If the Minister refuses an application or revokes a licence under this paragraph, he or she shall-

- (a) notify the applicant or holder of the licence of the decision and the reasons therefor, and that he or she may make representations to the Minister within 14 days of the notification but without prejudice to the decision,
- (b) consider a representation duly made, and
- (c) confirm, modify or annul the decision and notify the applicant or holder of the licence of the decision and the reasons therefor.

(8) A person to whom a licence is granted shall make such returns to the Minister as and when, and in a form, that the Minister may direct.

Powers of authorised officer

7.(1) If an authorised officer has reasonable cause to suspect that -

- (a) poultry or a poultry product is or may be on a premises,
- (b) a record relating to poultry or a poultry product is or may be on a premises,
- (c) a person is refusing or has refused to comply with a requirement, request or direction of an authorised officer under subparagraph (viii), (x), (xi), (xii) or (xiii),
- (d) a premises contains or has recently contained poultry or a poultry product,
- (e) an offence is being or has been committed under these Regulations,

the officer may –

- (i) enter and search the premises,
- (ii) stop any person,
- (iii) board and search any vehicle or container,
- (iv) search a person, where the authorised officer considers it necessary,

- (v) examine poultry, a poultry product, vehicle or container,
 - (vi) take such specimens from poultry or poultry product as the authorised officer considers appropriate,
 - (vii) seize and detain (for so long as is necessary) any poultry, poultry product, vehicle or container,
 - (viii) require the production of any relevant document or thing relating to poultry, poultry product, vehicle 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, poultry or a poultry product to dispose of it in a manner as the authorised officer sees fit,
 - (xi) give directions to, or request such information of, a person regarding poultry or a poultry product, fodder, litter or 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 the poultry or poultry product is being delivered or who is causing it to be delivered,
 - (xiii) require of the person the ownership, identity and origin of the poultry or poultry product, fodder or litter, or
 - (xiv) mark or otherwise identify poultry or a poultry product or a specimen taken under subparagraph (vi).
- (2) An authorised officer shall not enter, other than with the consent of the occupier, a private dwelling, unless he or she has obtained a search warrant under Regulation 8.
- (3) An authorised officer when exercising any powers under this Regulation or Regulation 8 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 those powers.
- (4) An authorised officer shall not be 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.
- (5) If a member of the Garda Síochána has reasonable cause 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) that there is on any premises poultry or a poultry product that has been, may have been or may be the subject of a contravention of these Regulations, or
- (b) that there is evidence of an offence under these regulations relating to poultry or a poultry product on a premises,

the judge may issue a search warrant.

- (2) A search warrant issued under this Regulation shall be expressed and operate to authorise a named authorised officer, accompanied by such authorised officers, members of the Garda Síochána, officers of Customs and Excise and other persons as the named officer thinks necessary, at any time or times, within one month from the date of issue of the warrant, on production if so requested of the warrant, to enter (if necessary by force) the premises named in the warrant.
- (3) Where any 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.

Obstruction

9. A person shall not -

- (a) obstruct or impede an authorised officer in the exercise of any of his or her powers under Regulation 7 or 8,
- (b) fail, without reasonable excuse, to comply with a requirement or direction made by an authorised officer under Regulation 7, or
- (c) in purporting to give information required by an authorised officer for the performance of the officer's powers under Regulation 8 –
 - (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

10. (1) A person who, by act or omission, contravenes Regulation 3, 4, 5, 6 or 9 commits an offence and is liable on conviction to a fine not exceeding €5,000 or to a term of imprisonment not exceeding 6 months, or to both such fine and such imprisonment.
- (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 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.
- (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,
27 October 2005

Mary Coughlan
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 provide for (a) an immediate ban on the collection of poultry and captive birds for poultry markets, shows, exhibitions and cultural events (other than under licence) and (b) record keeping and the reporting of unusual or unexplained patterns of bird mortalities at commercial premises. Penalties for breaches of these regulations are also provided for.

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