

R E G U L A T I O N S

S.I. No. 480 of 2006

**European Communities (Protection measures in relation to highly
pathogenic avian influenza of subtype H5N1 in wild birds) (No. 2)**

Regulations 2006

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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 effect to Commission Decision 2006/563/EC of 11 August 2006¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Communities (protection measures in relation to highly pathogenic avian influenza of subtype H5N1 in wild birds) (No. 2) Regulations 2006.

Interpretation

2. (1) In these Regulations -
 - “authorise” means to allow under licence or other written form;
 - “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 2006/563/EC of 11 August 2006;
 - “control area ” and “monitoring area” shall be construed in accordance with Regulation 3;
 - “Minister” means Minister for Agriculture and Food;
 - “official veterinarian” means an inspector of the Minister under the Diseases of Animals Act 1966.

¹ OJ No. L222, 15.8.2006, p.11

- (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.

Establishment of control and monitoring areas

3. (1) The Minister shall, by notice, taking into account Article 3 of the Commission Decision, establish around the area where the presence of highly pathogenic avian influenza caused by avian influenza A virus of subtype H5 is confirmed in wild birds and the neuraminidase type N1 is either suspected or confirmed -
- (a) a control area with a radius of at least 3 kilometres, and
 - (b) a monitoring area with a radius of initially at least 10 kilometres, including the control area.
- (2) If wild birds are suspected or confirmed to be infected with HPAI H5N1 in a protection or surveillance zone established pursuant to the requirements of Regulation 12 of the European Communities (Protection Measures in relation to Avian Influenza in Poultry and other Captive Birds) Regulations 2006 (S.I. No. xxx of 2006) due to such infection in poultry or other captive birds, a control and a monitoring area shall be established in accordance with paragraph (1) and subsequently a risk assessment shall be undertaken to consider whether the control and monitoring areas need to be extended to overlap the protection and surveillance zones.
- (3) The Minister may by notice apply the measures in Regulation 4 to any parts of the protection and surveillance zones that do not overlap with the control and monitoring areas when a risk assessment indicates that there is a risk of spreading HPAI H5N1 to poultry or other captive birds in those parts.

- (4) By derogation from paragraph (1), the Minister may decide not to establish the control and monitoring areas on the basis of a favourable outcome of a risk assessment which takes into account geographical considerations and the ecology of the infected bird species. The Minister may then conclude that HPAI H5N1 is not present in the area in poultry, other captive birds, or wild birds, or that the infected wild bird did not present a risk of spreading that virus to poultry, other captive birds or wild birds in the locality.
- (5) By way of derogation from paragraph (1)(a) and on the basis of favourable results of a risk assessment which has taken into account at least the criteria referred to in Article 3(2) of the Commission Decision and confirmed the existence of sufficient protection of local poultry or other captive birds based on natural barriers or the absence of suitable habitats for wild birds presenting a risk of spreading HPAI H5N1, the control area may be:
- (a) amended to an area of sufficient size but not less than 1 km radius; or
 - (b) established as a band of 1 km width from the banks of a river or the shore of a lake or coast for a length of at least 3 km.
- (6) Where the control area is amended under the provisions of paragraph (5), by derogation from paragraph (1)(b), the Minister shall then adapt the shape and the size of the monitoring area accordingly to separate the control area from the unaffected parts of the State.
- (7) Notice of the establishment, amendment or adaptation of a control or a monitoring area under this Regulation or Regulation 8 shall be published in the *Iris Oifigiúil* and at least one newspaper published in the State and circulating in the area concerned and by any other method the Minister considers appropriate.

Precautionary measures for control and monitoring areas

4. Persons who own or control poultry or any captive bird in holdings within a control or monitoring area shall -
 - (a) implement appropriate on-farm biosecurity measures, including disinfection at the entrances and exits to premises where poultry and other captive birds are kept, and
 - (b) apply the other biosecurity measures provided for in the European Communities (Avian Influenza) (Precautionary Measures) Regulations 2006 (S.I. No. 121 of 2006).

Specific measures for control areas

5. The following are prohibited in a control area -
 - (a) the removal of poultry or other captive birds from holdings on which they are kept;
 - (b) the assembly of poultry or other captive birds at fairs, markets, shows, or other gatherings;
 - (c) the transport through the control area of poultry or other captive birds, except transit through the control area by road or railways without unloading or stopping;
 - (d) the dispatch of hatching eggs collected from holdings which on the date of collection were situated in the control area;
 - (e) the dispatch from the control area of fresh meat, minced meat, meat preparations and meat products from poultry originating from the control area and wild feathered game taken from the wild in that area;

- (f) the transport or spread of unprocessed manure from holdings within the control area, except the transport for treatment in accordance with Regulation (EC) No. 1774/2002²;
- (g) the dispatch to other Member States and third countries of animal by-products of avian origin derived from poultry, other captive birds, or wild feathered game originating from the control area;
- (h) the hunting of wild birds or otherwise taking them from the wild, unless authorised by an authorised officer for specific purposes;
- (i) the release of game birds from captivity into the wild.

Specific measures for monitoring areas

6. The following are prohibited in a monitoring area -
- (a) the removal of poultry and other captive birds out of the monitoring area for the first 15 days following the date of establishment of that area;
 - (b) the assembly of poultry or other captive birds at fairs, markets, shows or other gatherings;
 - (c) the hunting of wild birds or otherwise taking them from the wild, unless authorised by an authorised officer for specific purposes;
 - (d) the release of game birds from captivity into the wild.

Directions under Regulation 4, 5 or 6

7. A direction may be given by the Minister or an official veterinarian in respect of the requirements of Regulations 4, 5 or 6 either

² O.J No. L 273, 10.10.2002, p.1

- (a) generally by publishing a notice of it in the *Iris Oifigiúil* and in at least one newspaper published in the State and circulating in the control and monitoring areas,
- (b) directly to a person by being given to the person or left at the holding concerned in the control and monitoring areas by an authorised officer, or
- (c) by such other means as is considered appropriate.

Duration of measures within control and monitoring areas

8. (1) If the neuraminidase type is confirmed as being different from N1, the measures provided for in Regulations 4, 5 and 6 cease to apply.
- (2) Where the presence of HPAI H5N1 is confirmed in wild birds, the measures provided for in Regulations 4, 5, and 6 shall apply for as long as is necessary having regard to the geographical, limnological, administrative, ecological and epizootiological factors relating to avian influenza and for at least 21 days in the case of the control area and 30 days in the case of the monitoring area following the date of collection from wild birds of the samples on which the HPAI H5N1 virus was confirmed.
- (3) Notwithstanding paragraph (2), following the favourable outcome of a risk assessment taking into account the criteria in Article 3(2) of the Commission Decision, the measures provided for in Regulation 5(a) to (g) in relation to the control area and provided for in Regulation 6 in relation to the monitoring area may be suspended even where further infected wild birds have been found, provided that at least 21 days have lapsed since the initial establishment of the control and monitoring areas and there has been no outbreak of HPAI H5N1

and no suspicion of avian influenza in poultry and other captive birds in these areas.

- (4) By way of derogation from paragraph (2), where, in accordance with Regulation 3(2), a control or monitoring area overlaps with a surveillance zone and that surveillance zone has been lifted, the Minister may, on the basis of a favourable outcome of a risk assessment, suspend some or all of the measures provided for in Regulations 4 and 5 in the control area.
- (5) By way of derogation from paragraph (2), the Minister may replace the control area by a monitoring area subject to the following conditions:
 - (a) favourable results of a risk assessment, taking into account the criteria in Article 3(2) of the Commission Decision, are available,
 - (b) all poultry holdings within the control area have been identified and at least one visit has been made to each holding, and
 - (c) negative results have been obtained from laboratory tests carried out in accordance with article 5(e)(i) of the Commission Decision.
- (6) Where under paragraph (5) a control area is replaced by a monitoring area -
 - (a) the shape and size of that monitoring area may be changed provided that the altered monitoring area remains at least 1 km in radius or a band of 1 km in width from the banks of a river or the shores of a lake or coast for a length of at least 3km, and
 - (b) the measures provided for in Regulation 4 and Regulation 5(h) and (i) shall be maintained until the end of the 30 days from the date of the establishment of the control and monitoring areas in accordance with Regulation 3(1).

Arrangements for movements of poultry and poultry products in and from control and monitoring areas

9. (1) Notwithstanding Regulations 5 and 6, an official veterinarian may, based on the favourable results of a risk assessment, authorise any of the following -
- (a) the transport or dispatch of poultry in accordance with Article 9 of the Commission Decision,
 - (b) the transport or dispatch of hatching eggs in accordance with Article 10 of the Commission Decision,
 - (c) the transport or dispatch of meat, minced meat, meat preparations, mechanically separated meat and meat products in accordance with Article 11 of the Commission Decision,
 - (d) the dispatch of animal by-products of avian origin in accordance with Article 12 of the Commission Decision,
 - (e) the transport or spread of unprocessed manure from holdings within the control area if originating from stables or sheds in accordance with Article 12(3) of the Commission Decision.
- (2) Where the movement of poultry and products thereof referred to in paragraph (1) is authorised, all appropriate biosecurity measures specified in the authorisation shall be taken by all those engaged in the movement so as to avoid the spread of avian influenza.
- (3) Where the dispatch, movement or transport of products referred to in paragraph (1) (other than subparagraph (a)) are authorised, they must be obtained, handled, treated, stored and transported without compromising the

animal health status of other products fulfilling all the animal health requirements for trade, placing on the market or export to third countries.

- (4) An authorisation under this Regulation may be given -
 - (a) generally by having a notice of it published in the *Iris Oifigiúil* and in at least one newspaper published in the State and circulating in the area to which the movement relates,
 - (b) by such other means as the Minister considers appropriate or directly to a person by being given to the person, or
 - (c) left at the holding concerned by an authorised officer.

Powers of authorised officer

- 10. (1) An authorised officer may, for the purpose of enforcing these Regulations and the Commission Decision, exercise all or any of the powers conferred on an authorised officer under section 17A of the Diseases of Animals Act 1966 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.

- (2) An authorised officer, being an inspector of the Minister, in exercising his or her powers under section 17A of the Diseases of Animals Act 1966 may in making a clinical inspection of poultry or other captive birds collect samples for laboratory examination.

Forgery

- 11 (1) A person shall not forge or utter knowing it to be forged any notice, direction, authorisation or derogation issued under these Regulations (hereafter in this Regulation referred to as "a forged document").
- (2) A person shall not alter with intent to defraud or deceive, or to utter knowing it to be so altered a notice, direction, authorisation or derogation issued under these Regulations (hereafter in this Regulation referred to as "an altered document").
- (3) A person shall not have, without lawful authority, in his or her possession or under his or her control a forged document or an altered document.

Offences, Penalties, etc

12. (1) A person who contravenes or causes or permits another to contravene a provision of Regulation 4, 5 or 6 commits an offence.
- (2) The holder of an authorisation under Regulation 9 who fails to comply with the provisions of the authorisation or with paragraph (2) or (3) of that Regulation commits an offence.
- (3) A person guilty of 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.
- (4) An offence under these Regulations may be prosecuted by the Minister.

- (5) Where 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.
- (6) If the affairs of a body corporate are managed by its members, paragraph (5) 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.

Production of notice in legal proceedings, etc

13. (1) A copy of the *Iris Oifigiúil* purporting to contain a notice under these Regulations may be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the notice.
- (2) A copy of a notice under these Regulations, 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 of that officer, be produced in every court and in all legal proceedings and is evidence, unless the contrary is shown, of the notice.
- (3) The Minister may authorise in writing an officer of the Minister to issue a notice on his or her behalf under these Regulations.

Revocation

14. The European Communities (Protection Measures in relation to Avian Influenza in Wild Birds) Regulations 2006 (S.I. No. 125 of 2006) are revoked.

GIVEN under my Official Seal,

September 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 2006/563/EC and provide for the establishment of control and monitoring areas and the measures to be applied therein in the event of a suspect or confirmed case of highly pathogenic avian influenza of subtype H5N1 in wild birds in Ireland.