



STATUTORY INSTRUMENTS

S.I. No. 7 of 2008

EUROPEAN COMMUNITIES (AVIAN INFLUENZA)
(PRECAUTIONARY MEASURES) REGULATIONS 2008

(Prn. A8/0068)

EUROPEAN COMMUNITIES (AVIAN INFLUENZA)
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I, MARY COUGHLAN, 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 full effect to Commission Decision 2005/734/EC of 19 October 2005¹ as amended by Commission Decision 2005/745/EC of 21 October 2005², Commission Decision 2005/855/EC of 30 November 2005³, Commission Decision 2006/574/EC of 18 August 2006⁴, Commission Decision 2007/105/EC of 15 February 2007⁵ and Commission Decision 2007/803/EC of 6 December 2007⁶ hereby make the following regulations:

Citation.

1. These Regulations may be cited as the European Communities (Avian Influenza) (Precautionary Measures) Regulations 2008.

Interpretation.

2. (1) In these Regulations—

“approved disinfectant” means a disinfectant which for the time being stands approved by the Minister in accordance with the Diseases of Animals (Disinfectants) Order 1975 (S.I. No. 273 of 1975) as amended by the Diseases of Animals (Disinfectants) Order 1975 (Amendment) Order 1978 (S.I. No. 345 of 1978);

“authorised officer” means

- (a) 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,
- (b) a member of the Garda Síochána, or
- (c) an officer of Customs and Excise;

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

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

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.

⁴ O.J. No. L228, 22.8.2006, p. 24.

⁵ O.J. No. L46, 16.2.2007, p. 54.

⁶ O.J. No. L326, 8.12.2007, p. 42

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 25th January, 2008.*

2005, Commission Decision 2005/855/EC of 30 November 2005, Commission Decision 2006/574/EC of 18 August 2006, Commission Decision 2007/105/EC of 15 February 2007 and Commission Decision 2007/803/EC of 6 December 2007;

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

“poultry” means

- (a) all birds that are reared or kept for breeding, the production of meat, eggs, or other products, for restocking supplies of game birds or for the purposes of any breeding for the production of these categories of birds, and
- (b) any bird other than poultry that is kept in captivity for any reason other than those referred to in (a) and including those that are kept for shows, races, exhibitions, competitions, breeding or selling;

“premises” includes land (whether with or without buildings);

“veterinary practitioner” has the same meaning as in the Veterinary Practice Act 2005 (No. 22 of 2005);

(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 in Avian Influenza High Risk Areas.

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, taking into account the criteria and risk factors set out in Annex 1 to the Commission Decision, declare all or part of the State to be at particularly high risk for the introduction of avian influenza (“avian influenza high risk area”).

(2) A person in possession of or in control of poultry located in an area that has been declared to be an avian influenza high risk area shall ensure that—

- (a) poultry are kept indoors in a place that is inaccessible to wild birds (in particular waterfowl),
- (b) direct and indirect contact is prevented between birds living in the wild (in particular waterfowl), and poultry and other birds, in particular ducks and geese,
- (c) domestic ducks and geese are separated from other poultry,
- (d) outdoor water reservoirs are not used for poultry,
- (e) poultry are not provided with water from surface water reservoirs accessed by wild birds,
- (f) birds of the orders of *Anseriformes* and *Charadriiformes* are not used as decoy birds during bird hunting.

(3) The bringing together of poultry at markets, shows, exhibitions and cultural events, including point-to-point races of birds, is prohibited in an area that has been declared to be an avian influenza high risk area.

(4) Notwithstanding paragraph (2), the Minister may by notice authorise some or all of the following—

- (a) the keeping of poultry in the open air, provided that the poultry are supplied with feed and water indoors or under a shelter which sufficiently discourages the landing of wild birds and thereby prevents contact by wild birds with the feed or water intended for the poultry,
- (b) the use of outdoor water reservoirs where they are required for animal welfare reasons for certain poultry and provided they are sufficiently screened against wild waterfowl,
- (c) the provision of water to poultry from surface water accessed by wild waterfowl after treatment that ensures inactivation of the possible avian influenza virus,
- (d) the use of decoy birds during bird-hunting by decoy bird holders registered with the Minister and provided that their use is undertaken in accordance with article 2(b)(1)(d) of the Commission Decision.

(5) Notwithstanding paragraph (3), the Minister may by notice authorise gatherings of poultry.

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

Notification of unusual or unexplained circumstances

4. If, having regard to Annex II to the Commission Decision, the owner or person in charge of poultry that are located in an area that has been declared to be an avian influenza high risk area 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, or
- (c) a decrease in the intake of feed or water among the poultry,

he or she shall immediately notify the veterinary practitioner having clinical charge of the poultry.

Functions of authorised officer

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

- (a) poultry, a carcase or the product or by-product of poultry or a vehicle or trailer used in connection with the transport of poultry are present, have been present or may be present on a premises,
- (b) poultry, a carcase or the product or by-product of poultry are or have been kept, processed, stored or otherwise dealt with on a premises,
- (c) equipment, plant or machinery used in connection with poultry, a carcase or the product or by-product of poultry has been, is or may be on a premises,
- (d) avian influenza is or may be present on a premises, or
- (e) a document relating to a thing referred to in paragraph (a), (b), (c) or (d) 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 poultry, a carcase, the product or by-product of poultry, a vehicle, vessel, container, equipment, machinery, poultry house and its surroundings, water supplies or other thing,
- (v) take, without payment, samples of poultry, a carcase, the product or by-product of a poultry or other thing 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 poultry, a carcase, the product or by-product of poultry, a 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 poultry, a carcase, the product or by-product of poultry, a 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 poultry, a carcass, the product or by-product of poultry or other thing are being delivered or who is causing it to be delivered,
 - (xi) require of a person the ownership, identity and origin of the poultry, carcass, the product or by-product of poultry, 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 other investigations,
 - (xiv) mark or otherwise identify poultry or other birds, a carcass, the product or by-product of poultry, a 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 these Regulations,
 - (b) evidence of an offence or contravention to which paragraph (a) relates may be, is or has been on a premises—

the authorised officer may, in addition to the powers exercisable by him or her under paragraph (1)—

- (i) search a person, where the authorised officer considers it necessary,
 - (ii) seize and detain poultry, a carcass, the product or by-product of a poultry, a 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 poultry, a carcass, the product or by-product of poultry or other birds or other thing 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 poultry or other birds, a carcass or the product or by-product of poultry or other birds) 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 8 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 Regulation.

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

- (a) prohibiting, restricting or otherwise controlling the use, processing or movement of poultry, a carcase, the product or by-product of poultry or other birds, vessel, vehicle, container, equipment, machinery or other thing as may be specified by the authorised officer, or
- (b) requiring 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 or treatment of poultry or other birds or place with an approved disinfectant) 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 these Regulations, the member may without warrant arrest the person.

(9) If in the course of exercising any powers under these Regulations an authorised officer finds or comes into possession of any thing that the officer believes to be evidence of an offence or suspected offence under these Regulations, 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.

Bio-security notice.

6. (1) Without prejudice to Regulation 3, 4 or 5, 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 of avian influenza, or
- (c) further measures should be taken to prevent the outbreak of avian influenza or to minimise 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 in an area that has been

declared to be an avian influenza high risk area, a notice (in this Regulation referred to as a “bio-security notice”) stating that opinion and directing that—

- (i) the poultry 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 are located as are specified in the notice,
- (iii) the poultry be housed as specified in the notice,
- (iv) measures be taken to secure the effective isolation of the poultry or poultry of a particular class or description,
- (v) measures be taken to restrict access of the poultry or poultry of a particular class or description to areas that may occasion a risk of an outbreak or spread of avian influenza,
- (vi) disinfection and cleansing procedures specified in the notice shall be established and adhered to, or
- (vii) any other biosecurity measures deemed necessary to prevent the introduction or spread of the avian influenza virus.

(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 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 to which a bio-security notice relates other than under and in accordance with the notice, or

(b) after such appeal, deal with poultry 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 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 to which the bio-security notice relates and sell or dispose of the poultry 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 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 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 to which the notice relates.

Assistance to an authorised officer

7. A person who has poultry, a carcass, the product or by-product of poultry or other birds, a vehicle, a vessel, machinery, equipment or document relating to any thing to which these Regulations refer in his or her possession or under his or her control and any agent or employee of that person, shall give any assistance requested to an authorised officer or person who accompanies an authorised officer.

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) evidence of or relating to the commission or intended commission of an offence under these Regulations is to be found on a premises,
- (b) there is or was poultry, a carcass, the product or by-product of poultry or other birds or equipment or other thing used or adapted for use (including manufacture and transport) in connection with poultry or other birds, carcass or the product or by-product of poultry or other birds on a premises,
- (c) a document or other record related to a thing to which subparagraph (a) or (b) refers is or may be on a 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 named in the warrant.

(3) If a premises is entered under a search warrant, an authorised officer so entering may exercise all or any of the powers conferred on an authorised officer under these Regulations.

Obstruction etc.

9. A person shall not—

- (a) obstruct or impede an authorised officer (or a person who accompanies an authorised officer) in the exercise of his or her powers under Regulation 5,
- (b) fail, without reasonable cause, to comply with a requirement or direction of an authorised officer under Regulation 5 or 6,
- (c) fail, without reasonable cause, to give assistance to an authorised officer in accordance with Regulation 7, or
- (d) in purporting to give information to an authorised officer for the performance of the officer's powers under Regulation 5—
 - (i) make a statement that 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 a material particular.

Forgery

10. (1) A person shall not forge or utter knowing it to be forged—

(a) a notice or authorisation under Regulation 3 or 6,

(b) a direction or requirement of an authorised officer under Regulation 5 or 6 (if the requirement or direction is in documentary form),

(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) a notice or authorisation under Regulation 3 or 6,

(b) a direction or requirement of an inspector or authorised officer under Regulation 5 or 6 (if the requirement or direction is in documentary form),

(hereafter in this Regulation referred to as an “altered document”).

(3) A person shall not have, without lawful authority (the proof of which lies on him or her), in his or her possession or under his or her control a forged document or an altered document.

Offences, etc.

11. (1) A person who contravenes or aids or abets a contravention of—

(a) Regulation 3, 4, 5, 6, 7, 9 or 10,

(b) a direction or requirement of an authorised officer,

commits an offence and is liable—

(i) on summary conviction, to a fine not exceeding €5,000, or to imprisonment for a term not exceeding 6 months, or to both, or

(ii) on conviction on indictment—

(I) in the case of a first offence, to a fine not exceeding €100,000, or to imprisonment for a term not exceeding 1 year, or to both, or

(II) in the case of a second or subsequent offence to a fine not exceeding €250,000, or to imprisonment for a term not exceeding 3 years, or to both.

(2) 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 is guilty of the offence.

(3) If the affairs of a body corporate are managed by its members, paragraph (2) 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.

(4) A summary offence under these Regulations may be prosecuted by the Minister.

Evidence on certificate

12. (1) In proceedings for an offence consisting of a contravention of these Regulations, a certificate purporting to be signed by a person employed at a laboratory named in the certificate stating the capacity in which that person is so employed and stating any one or more of the following, namely—

- (a) that the person received a sample submitted to the laboratory,
- (b) that, for such period as is specified in the certificate, the person had in his or her custody a sample so submitted,
- (c) that the person gave to such other person as is specified in the certificate a sample so submitted, or
- (d) that the person carried out any laboratory examination for the purpose of detecting the presence, in a sample so submitted, of bluetongue disease, or that the sample was positive for bluetongue disease,

is, unless the contrary is shown, evidence of the matters stated in the certificate.

(2) A certificate purporting to be signed by an officer of the Minister and to certify that on a specific day or days or during the whole of a specified period—

- (a) a person was or was not the holder of a movement notice, or
- (b) that a particular movement notice was subject to a particular condition or conditions,

is, without proof of the signature of the person purporting to sign the certificate or that he or she is an officer of the Minister, evidence, unless the contrary is shown, of the matters stated in the certificate.

(3) In any proceedings, evidence of a notice may be given by producing a copy of the notice which has endorsed on it a certificate purporting to be signed by an officer of the Minister stating that the copy is a true copy is, without proof of the signature of the person purporting to sign the certificate or that he or she is an officer of the Minister, evidence, unless the contrary is shown, of the notice.

(4) In proceedings for an offence under these Regulations the court may, if it considers that the interests of justice so require, direct that oral evidence of the matters stated in a certificate under paragraph (1), (2) or (3) be given, and the court may for the purpose of receiving oral evidence adjourn the matter.

(5) In any proceedings, evidence of an act of the institutions of the European Community may be given by production of a copy of the act certified by an officer of the Minister to be a copy of the act, and it is not necessary to prove the signature of the officer or that he or she is an officer of the Minister.

(6) Paragraph (5) is in addition to and not in substitution for the European Communities (Judicial Notice and Documentary Evidence) Regulations 1972 (S.I. No. 341 of 1972).

Publication of notices

13. (1) The Minister shall, as soon as may be after making a notice under Regulation 3, cause notice of the making of the notice to be published in print or other media, including by electronic communication, in a manner that would be, in his or her opinion, reasonably expected to inform a person affected of the terms of the notice.

(2) 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.

Revocation

14. The following are revoked—

- (a) the European Communities (Avian Influenza) (Precautionary Measures) Regulations 2006 (S.I. No. 121 of 2006), and
- (b) the European Communities (Avian Influenza) (Precautionary Measures) Amendment Regulations 2006 (S.I. No. 700 of 2006)



GIVEN under my Official Seal,
17 January 2008

MARY COUGHLAN,
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).

These Regulations transpose into national law various EU Commission Decisions relating to biosecurity measures to be applied in areas deemed to be at particularly high risk for the introduction of avian influenza and provide also for related matters.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ón
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