

Statutory Instruments

S.I. No. 565 of 2005

European Communities (Avian Influenza) (Control on imports of Avian Products and Live Birds from Several Third Countries) Regulations, 2005

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European Communities (Avian Influenza) (Control on Imports of Avian Products and Live Birds from Several Third Countries) 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 (No. 27 of 1972), and for the purpose of giving effect to Commission Decision 2004/122/EC¹ of 6 February 2004 as amended by Commission Decision 2004/572/EC² of 23 July 2004, Commission Decision 2004/606/EC³ of 20 August 2004, Commission Decision 2004/851/EC⁴ of 14 December 2004, Commission Decision No 2005/194/EC⁵ of 8 March 2005, Commission Decision 2005/390/EC⁶ of 18 May 2005 and Commission Decision 2005/619/EC⁷ of 18 August 2005 hereby make the following regulations -

Citation

1. These Regulations may be cited as the European Communities (Avian Influenza) (Control on Imports of Avian Products and Live Birds from Several Third Countries) Regulations 2005.

Interpretation

- 2.(1) In these Regulations —

"avian product" means fresh meat of poultry, ratites, farmed and wild feathered game, meat preparations and meat products consisting of or containing meat derived from an aforementioned species, raw pet food and unprocessed feed material containing any parts of the aforementioned species, eggs for human consumption, untreated game trophies from any birds and unprocessed feathers and parts of feathers:

"authorised officer" means —

- (a) an authorised officer within the meaning of section 17A (inserted by section 2 of the Diseases of Animals (Amendment) Act 2001 (No. 3 of 2001) of the Diseases of Animals Act 1966 (No. 6 of 1996),
- (b) a member of the Garda Síochána, or
- (c) an officer of Customs and Excise;

¹ OJ No L36, 7.2.2004. p 59

² OJ No L 253, 29.7.2004, p 22

³ OJ No L273, 21.8.2004, p21

⁴ OJ No L368, 15.12.2004, p48

⁵ OJ No L63, 10.3.2005, p25

⁶ OJ No L128, 21.5.2005, p77

⁷ OJ No L214, 19.8.2005, p 66

"Commission Decision" means Commission Decision 2004/122/EC as amended by Commission Decision 2004/572/EC of 23 July 2004, Commission Decision 2004/606/EC of 20 August 2004, Commission Decision 2004/851/EC of 14 December 2004, Commission Decision No 2005/194/EC of 8 March 2005, Commission Decision 2005/390/EC of 18 May 2005 and Commission Decision 2005/619/EC of 18 August 2005;

"several third countries" means Cambodia, Peoples Republic of China including Hong Kong, Indonesia, Kazakhstan, Laos, Malaysia, North Korea, Pakistan, Russia, Thailand, and Vietnam;

"specified avian product" means raw pet food and unprocessed feed material containing any part of poultry and unprocessed feathers, eggs for human consumption and untreated game trophies from any birds;

"Minister" means the Minister for Agriculture and Food;

"live bird" means birds other than poultry as defined in Commission Decision 2000/666/EC⁸ including birds accompanying their owners;

"premises" includes land with or without buildings;

"vehicle" includes a ship, hovercraft, aircraft and offshore installation (being an offshore installation within the meaning assigned to it by section 2 (1) of the Safety, Health and Welfare (Offshore Installations) Act, 1987 (No. 18 of 1987)).

- (2) A word or expression that is used in these Regulations and that 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.
- (3) In these Regulations, unless the contrary intention appears, a reference to a Regulation is to a reference in these Regulations and a reference to a paragraph or sub-paragraph is to the paragraph or sub-paragraph of the provision in which the reference occurs.

Restriction on imports of live birds from several third countries

- 3. A person, including the master or a person in charge of a vehicle, shall not import a live bird from several third countries.

Restriction on the import of avian products from Thailand

- 4. (1) Subject to paragraphs (2), (3) and (4) a person, including the master or person in charge of a vehicle, shall not import an avian product which has been obtained from birds slaughtered after 31 December 2003 from

⁸ OJ No. L278. 31.10.2000, p 26

Thailand or cause or permit another person to import such an avian product from Thailand.

- (2) A person importing an avian product from Thailand area shall ensure that any such consignment is accompanied by a veterinary certificate including the following statement “type of product/poultry meat preparation in accordance with Article 3(1) of the Commission Decision 2004/122/EC”.
- (3) Paragraph (1) does not apply to the import of a poultry meat product when the health certificate accompanying the consignment specifies that it has undergone a heat treatment specified at B, C or D of Part IV of the Annex to Commission Decision 97/222/EC⁹
- (4) Paragraph (1) does not apply to the import of processed feathers or parts of feathers where the commercial document accompanying the consignment states that the product has been treated with a steam current or by some other method ensuring that no pathogens are transmitted.

Restriction on Imports of avian products from the Peoples Republic of China including Hong Kong

- 5. (1) Subject to paragraph (2), a person, including the master or person in charge of a vehicle, shall not import an avian product from China.
- (2) Paragraph (1) does not apply to the import of processed feathers or parts of feathers where the commercial document accompanying the consignment states that the product has been treated with a steam current or by some other method ensuring that no pathogens are transmitted.

Restriction on Imports of avian products from Malaysia

- 6. (1) Subject to paragraph (2), a person, including the master or person in charge of a vehicle, shall not import specified avian product from Malaysia.
- (2) Paragraph (1) does not apply to the import of processed feathers or parts of feathers where the commercial document accompanying the consignment states that the product has been treated with a steam current or by some other method ensuring that no pathogens are transmitted.

Restriction on Imports of unprocessed feathers from Cambodia, the Peoples Republic of China including Hong Kong, Indonesia, Kazakhstan, Laos, Malaysia, North Korea, Pakistan, Russia, and Vietnam

- 7. (1) Subject to paragraph (2) a person. including the master or person in charge of a vehicle, shall not import unprocessed feathers or parts of unprocessed feathers from several third countries.

⁹ OJ No. L87, 4.4.1997, p39

- (2) Paragraph (1) does not apply to the import of processed feathers or parts of feathers where the commercial document accompanying the consignment states that the product has been treated with a steam current or by some other method ensuring that no pathogens are transmitted.

Possession

8. A person, including the master or a person in charge of a vehicle, shall not have in his or her possession or under his or her control a bird or avian product that has been imported in contravention of these Regulations.

Authorised Officers

9. (1) Where an authorised officer has reasonable cause to suspect that -

- (a) an avian product, a specified avian product or live bird is being or may have been imported in contravention of these Regulations,
- (b) an avian product, specified avian product or live bird has been moved other than in accordance with a requirement, request or direction of an authorised officer under subparagraph (vii), (x), (xi), (xii) or (xiii),
- (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) any land or premises, vehicle or container contains or has recently contained such an avian product, specified avian product or live bird,
- (e) any offence is being or has been committed under these Regulations,

such officer may –

- (i) enter and search any land, vehicle, premises or container,
- (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 such an avian product, specified avian product or live bird, vehicle or container,

- (vi) take such specimens from an avian product, specified avian product or live bird as the authorised officer considers appropriate,
 - (vii) seize and detain (for so long as is necessary) any such live birds, avian product or specified avian product, vehicle or container,
 - (viii) require the production of any relevant document or thing relating to the avian product, specified avian product or live bird, vehicle or container,
 - (ix) retain any such 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, a live bird, an avian product or specified avian product to dispose of it in such manner as the authorised officer sees fit,
 - (xi) give such directions to, or request such information of, such person regarding the avian product, fodder, litter, vessel, vehicle, aircraft or container 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 avian product, specified avian product or live bird is being delivered or who is causing it to be delivered,
 - (xiii) require of the person the ownership, identity and origin of the avian product, specified avian product or live bird, fodder or litter, or
 - (xiv) mark or otherwise identify such live birds, avian product or specified avian 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 10.
- (3) An authorised officer when exercising any powers under this Regulation or Regulation 10 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 section if the court is satisfied that the act was done in good faith and that there were reasonable grounds for doing it.

- (5) Where 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

10. (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 land or in any premises, vehicle, vessel, aircraft or container a live bird, an avian product or specified avian product that has been, may have been or may be imported in contravention of these Regulations, or
 - (b) that there is evidence of an offence under these regulations relating to a live bird, an avian product or specified avian product therein or thereon,
- 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 land, premises or vehicle, vessel, aircraft or container named in the warrant.
- (3) Where any premises, land or vehicle, vessel, aircraft or container 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

11. A person shall not -
- (a) obstruct or impede an authorised officer in the exercise of any of his or her powers under Regulation 9 or 10,
 - (b) fail, without reasonable excuse, to comply with a requirement or direction made by an authorised officer under Regulation 9, or

- (c) in purporting to give information required by an authorised officer for the performance of the officer's powers under Regulation 9 –
 - (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

- 12. (1) A person who contravenes Regulation 3, 4, 5, 6, 7, 8, or 11 is guilty of an offence and is liable on conviction to a fine not exceeding €3,000 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) 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, shall be guilty of an offence and shall be liable to be proceeded against and punished as if guilty of the first-mentioned offence.
- (4) Where 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.

Repeals

- 13. The European Communities (Avian Influenza) (Control on Imports of Avian Products and Live Birds from certain Asian countries) Regulations 2005 (S.I. No. 180 of 2005) are repealed.

GIVEN under my Official Seal,
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.)

This Order gives effect to Commission Decision 2004/122/EC of 6 February 2004 as amended by as amended by Commission Decision 2004/572/EC of 23 July 2004, Commission Decision 2004/606/EC of 20 August 2004, Commission Decision 2004/851/EC of 14 December 2004 and Commission Decision No 2005/194/EC of 8 March 2005, Commission Decision 2005/390/EC of 18 May 2005 and Commission Decision 2005/619/EC of 18 August 2005 concerning certain protective measures with regard to avian products and live birds imported from several third countries.